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**JUSTICE.**



# JUSTICE:

BEING

## PART IV

OF THE

# PRINCIPLES OF ETHICS.

BY

HERBERT SPENCER.

WILLIAMS AND NORGATE,  
14, HENRIETTA STREET, COVENT GARDEN, LONDON;  
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## PREFACE.

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IN the Preface to *The Data of Ethics*, published in June, 1879, there occurred the sentence:—"Hints, repeated of late years with increasing frequency and distinctness, have shown me that health may permanently fail, even if life does not end, before I reach the last part of the task I have marked out for myself." There followed the statement that since "this last part of the task"—the affiliation of Ethics on the doctrine of Evolution—was that "to which I regard all the preceding parts as subsidiary," I did not like to contemplate the probability of failure in executing it. Hence the decision to write *The Data of Ethics* in advance.

Something like the catastrophe foreseen gradually came. Years of declining health and decreasing power of work, brought, in 1886, a complete collapse; and further elaboration of The Synthetic Philosophy was suspended until the beginning of 1890, when it became again possible to get through a small amount of serious work daily. Of course there arose the question—What work to undertake first? Completion of *The Principles of Ethics* was, without hesitation, decided upon: the leading divisions of *The Principles of Sociology* having been executed. A further question presented itself—What part of *The Principles of Ethics* should have precedence? Led by the belief that my remaining energies would probably not carry me through the whole, I concluded that it would be best to begin with

the part of most importance. Hence, passing over Part II,—“The Inductions of Ethics,” and Part III,—“The Ethics of Individual Life,” I devoted myself to Part IV,—“The Ethics of Social Life : Justice,” and have now, to my great satisfaction, succeeded in finishing it.

Should improved health be maintained, I hope that, before the close of next year, I may issue Parts II and III, completing the first volume ; and should I be able to continue, I shall then turn my attention to Part V,—“The Ethics of Social Life : Negative Beneficence,” and Part VI,—“The Ethics of Social Life : Positive Beneficence.”

This work covers a field which, to a considerable extent, coincides with that covered by *Social Statics*, published in 1850 ; though the two differ, alike in extent, in form, and partially in their ideas. One difference is that what there was in my first book of supernaturalistic interpretation has disappeared, and the interpretation has become exclusively naturalistic—that is, evolutionary. With this difference may be joined the concomitant difference, that whereas a biological origin for ethics was, in *Social Statics*, only indicated, such origin has now been definitely set forth ; and the elaboration of its consequences has become the cardinal trait. And a further distinction is that induction has been more habitually brought in support of deduction. It has in every case been shown that the corollaries from the first principle laid down, have severally been in course of verification during the progress of mankind.

It seems proper to add that the first five chapters have already been published in *The Nineteenth Century* for March and April, 1890.

LONDON, *June*, 1891.

H. S.

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PART IV.

THE ETHICS OF SOCIAL LIFE.

JUSTICE.



## CHAPTER I.

### ANIMAL-ETHICS.

§ 1. Those who have not read the first division of this work will be surprised by the above title. But the chapters on "Conduct in General" and "The Evolution of Conduct," will have made clear to those who have read them that something which may be regarded as animal-ethics is implied.

It was there shown that the conduct which Ethics treats of is not separable from conduct at large; that the highest conduct is that which conduces to the greatest length, breadth, and completeness of life; and that, by implication, there is a conduct proper to each species of animal, which is the relatively good conduct—a conduct which stands towards that species as the conduct we morally approve stands towards the human species.

Most people regard the subject-matter of Ethics as being conduct considered as calling forth approbation or reprobation. But the primary subject-matter of Ethics is conduct considered objectively as producing good or bad results to self or others or both.

Even those who think of Ethics as concerned only with conduct which deserves praise or blame, tacitly recognize an animal-ethics; for certain acts of animals excite in them antipathy or sympathy. A bird which feeds its mate while she is sitting is regarded with a sentiment of approval. For

a hen which refuses to sit upon her eggs there is a feeling of aversion; while one which fights in defence of her chickens is admired.

Egoistic acts, as well as altruistic acts, in animals are classed as good or bad. A squirrel which lays up a store of food for the winter is thought of as doing that which a squirrel ought to do; and, contrariwise, one which idly makes no provision and dies of starvation, is thought of as properly paying the penalty of improvidence. A dog which surrenders its bone to another without a struggle, and runs away, we call a coward—a word of reprobation.

Thus, then, it is clear that acts which are conducive to preservation of offspring or of the individual we consider as good relatively to the species, and conversely.

§ 2. The two classes of cases of altruistic acts and egoistic acts just exemplified, show us the two cardinal and opposed principles of animal-ethics.

During immaturity benefits received must be inversely proportionate to capacities possessed. Within the family-group most must be given where least is deserved, if desert is measured by worth. Contrariwise, after maturity is reached benefit must vary directly as worth: worth being measured by fitness to the conditions of existence. The ill fitted must suffer the evils of unfitness, and the well fitted profit by their fitness.

These are the two laws which a species must conform to if it is to be preserved. Limiting the proposition to the higher types (for in the lower types, parents give to offspring no other aid than that of laying up small amounts of nutriment with their germs: the result being that an enormous mortality has to be balanced by an enormous fertility)—thus limiting the proposition, I say, it is clear that if, among the young, benefit were proportioned to efficiency, the species would disappear forthwith; and that if, among adults, benefit were proportioned to inefficiency,

the species would disappear by decay in a few generations (see *Principles of Sociology*, § 322).

§ 3. What is the ethical aspect of these principles? In the first place, animal life of all but the lowest kinds has been maintained by virtue of them. Excluding the *Protozoa*, among which their operation is scarcely discernible, we see that without *gratis* benefits to offspring, and earned benefits to adults, life could not have continued.

In the second place, by virtue of them life has gradually evolved into higher forms. By care of offspring, which has become greater with advancing organization, and by survival of the fittest in the competition among adults, which has become more habitual with advancing organization, superiority has been perpetually fostered and further advances caused.

On the other hand, it is true that to this self-sacrificing care for the young and this struggle for existence among adults, has been due the carnage and the death by starvation which have characterized the evolution of life from the beginning. It is also true that the processes consequent on conformity to these principles are responsible for the production of torturing parasites, which out-number in their kinds all other creatures.

To those who take a pessimist view of animal-life in general, contemplation of these principles can of course yield only dissatisfaction. But to those who take an optimist view, or a meliorist view, of life in general, and who accept the postulate of hedonism, contemplation of these principles must yield greater or less satisfaction, and fulfilment of them must be ethically approved.

Otherwise considered, these principles are, according to the current belief, expressions of the Divine will, or else, according to the agnostic belief, indicate the mode in which works the Unknowable Power throughout the

Universe ; and in either case they have the warrant hence derived.

§ 4. But here, leaving aside the ultimate controversy of pessimism *versus* optimism, it will suffice for present purposes to set out with a hypothetical postulate, and to limit it to a single species. If the preservation and prosperity of such species is to be desired, there inevitably emerge one most general conclusion and from it three less general conclusions.

The most general conclusion is that, in order of obligation, the preservation of the species takes precedence of the preservation of the individual. It is true that the species has no existence save as an aggregate of individuals ; and it is true that, therefore, the welfare of the species is an end to be subserved only as subserving the welfares of individuals. But since disappearance of the species, implying disappearance of all individuals, involves absolute failure in achieving the end, whereas disappearance of individuals, though carried to a great extent, may leave outstanding such number as can, by the continuance of the species, make subsequent fulfilment of the end possible ; the preservation of the individual must, in a variable degree according to circumstances, be subordinated to the preservation of the species, where the two conflict. The resulting corollaries are these :—

First, that among adults there must be conformity to the law that benefits received shall be directly proportionate to merits possessed : merits being measured by power of self-sustentation. For, otherwise, the species must suffer in two ways. It must suffer immediately by sacrifice of superior to inferior, which entails a general diminution of welfare ; and it must suffer remotely by further increase of the inferior which, by implication, hinders increase of the

superior, and causes a general deterioration, ending in extinction if it is continued.

Second, that during early life, before self-sustentation has become possible, and also while it can be but partial, the aid given must be the greatest where the worth shown is the smallest—benefits received must be inversely proportionate to merits possessed: merits being measured by power of self-sustentation. Unless there are *gratis* benefits to offspring, unqualified at first and afterwards qualified by decrease as maturity is approached, the species must disappear by extinction of its young. There is, of course, necessitated a proportionate self-subordination of adults.

Third, to this self-subordination entailed by parenthood has, in certain cases, to be added a further self-subordination. If the constitution of the species and its conditions of existence are such that sacrifices, partial or complete, of some of its individuals, so subserve the welfare of the species that its numbers are better maintained than they would otherwise be, then there results a justification for such sacrifices.

Such are the laws by conformity to which a species is maintained; and if we assume that the preservation of a particular species is a *desideratum*, there arises in it an obligation to conform to these laws, which we may call, according to the case in question, quasi-ethical or ethical.



## CHAPTER II.

### SUB-HUMAN JUSTICE.

§ 5. Of the two essential but opposed principles of action by pursuance of which each species is preserved, we are here concerned only with the second. Passing over the law of the family as composed of adults and young, we have now to consider exclusively the law of the species as composed of adults only.

This law we have seen to be that individuals of most worth, as measured by their fitness to the conditions of existence, shall have the greatest benefits, and that inferior individuals shall receive smaller benefits, or suffer greater evils, or both—a law which, under its biological aspect, has for its implication the survival of the fittest. Interpreted in ethical terms, it is that each individual ought to be subject to the effects of its own nature and resulting conduct. Throughout sub-human life this law holds without qualification; for there exists no agency by which, among adults, the relations between conduct and consequence can be interfered with.

Fully to appreciate the import of this law, we may with advantage pause a moment to contemplate an analogous law; or, rather, the same law as exhibited in another sphere. Besides being displayed in the relations among members of a species, as respectively well sustained or ill sustained according to their well-adapted activities or ill-

adapted activities, it is displayed in the relations of the parts of each organism to one another.

Every muscle, every viscus, every gland, receives blood in proportion to function. If it does little it is ill-fed and dwindles; if it does much it is well-fed and grows. By this balancing of expenditure and nutrition, there is, at the same time, a balancing of the relative powers of the parts of the organism; so that the organism as a whole is fitted to its existence by having its parts continuously proportioned to the requirements. And clearly this principle of self-adjustment within each individual, is parallel to that principle of self-adjustment by which the species as a whole keeps itself fitted to its environment. For by the better nutrition and greater power of propagation which come to members of the species that have faculties and consequent activities best adapted to the needs, joined with the lower sustentation of self and offspring which accompany less adapted faculties and activities, there is caused such special growth of the species as most conduces to its survival in face of surrounding conditions.

This, then, is the law of sub-human justice, that each individual shall receive the benefits and the evils of its own nature and its consequent conduct.

§ 6. But sub-human justice is extremely imperfect, alike in general and in detail.

In general, it is imperfect in the sense that there exist multitudinous species the sustentation of which depends on the wholesale destruction of other species; and this wholesale destruction implies that the species serving as prey have the relations between conduct and consequence so habitually broken that in very few individuals are they long maintained. It is true that in such cases the premature loss of life suffered from enemies by nearly all members of the species, must be considered as resulting from their natures—their inability to contend with the destructive agencies they are exposed to. But we may fitly recognize

the truth that this violent ending of the immense majority of its lives, implies that the species is one in which justice, as above conceived, is displayed in but small measure.

Sub-human justice is extremely imperfect in detail, in the sense that the relation between conduct and consequence is in such an immense proportion of cases broken by accidents—accidents of kinds which fall indiscriminately upon inferior and superior individuals. There are the multitudinous deaths caused by inclemencies of weather, which, in the great majority of cases, the best members of the species are liable to like the worst. There are other multitudinous deaths caused by scarcity of food, which, if not wholly, still in large measure, carries off good and bad alike. Among low types, too, enemies are causes of death which so operate that superior as well as inferior are sacrificed. And the like holds with invasions by parasites, often widely fatal. These frequently destroy the best individuals as readily as the worst.

The high rate of multiplication among low animals, required to balance the immense mortality, at once shows us that among them long survival is not insured by superiority; and that thus the sub-human justice, consisting in continued receipt of the results of conduct, holds individually in but few cases.

§ 7. And here we come upon a truth of great significance—the truth that sub-human justice becomes more decided as organization becomes higher.

Whether this or that fly is taken by a swallow, whether among a brood of caterpillars an ichneumon settles on this or that, whether out of a shoal of herrings this or that is swallowed by a cetacean, is an event quite independent of individual peculiarity: good and bad samples fare alike. With high types of creatures it is otherwise. Keen senses, sagacity, agility, give a particular carnivore special power to secure prey. In a herd of herbivorous creatures, the one with quickest hearing, clearest vision, most sensitive

nostril, or greatest speed, is the one most likely to save itself.

Evidently, in proportion as the endowments, mental and bodily, of a species are high, and as, consequently, its ability to deal with the incidents of the environment is great, the continued life of each individual is less dependent on accidents against which it cannot guard. And, evidently, in proportion as this result of general superiority becomes marked, the results of special superiorities are felt. Individual differences of faculty play larger parts in determining individual fates. Now deficiency of a power shortens life, and now a large endowment prolongs it. That is to say, individuals experience more fully the results of their own natures—the justice is more decided.

§ 8. As displayed among creatures which lead solitary lives, the nature of sub-human justice is thus sufficiently expressed; but on passing to gregarious creatures we discover in it an element not yet specified.

Simple association, as of deer, profits the individual and the species only by that more efficient safeguarding which results from the superiority of a multitude of eyes, ears, and noses over the eyes, ears, and nose of a single individual. Through the alarms more quickly given, all benefit by the senses of the most acute. Where this, which we may call passive co-operation, rises into active co-operation, as among rooks where one of the flock keeps watch while the rest feed, or as among the cimarrons, a much-hunted variety of mountain sheep in Central America, which similarly place sentries, or as among beavers where a number work together in making dams, or as among wolves where, by a plan of attack in which the individuals play different parts, prey is caught which would otherwise not be caught; there are still greater advantages to the individuals and to the species. And, speaking generally, we may say that gregariousness, and co-operation more or less

active, establish themselves in a species only because they are profitable to it ; since, otherwise, survival of the fittest must prevent establishment of them.

But now mark that this profitable association is made possible only by observance of certain conditions. The acts directed to self-sustentation which each performs, are performed more or less in presence of others performing like acts ; and there tends to result more or less interference. If the interference is great, it may render the association unprofitable. For the association to be profitable the acts must be restrained to such extent as to leave a balance of advantage. Survival of the fittest will else exterminate that variety of the species in which association begins.

Here, then, we find a further factor in sub-human justice. Each individual, receiving the benefits and the injuries due to its own nature and consequent conduct, has to carry on that conduct subject to the restriction that it shall not in any large measure impede the conduct by which each other individual achieves benefits or brings on itself injuries. The average conduct must not be so aggressive as to cause evils which out-balance the good obtained by co-operation. Thus, to the positive element in sub-human justice has to be added, among gregarious creatures, a negative element.

§ 9. The necessity for observance of the condition that each member of the group, while carrying on self-sustentation and sustentation of offspring, shall not seriously impede the like pursuits of others, makes itself so felt, where association is established, as to mould the species to it. The mischiefs from time to time experienced when the limits are transgressed, continually discipline all in such ways as to produce regard for the limits ; so that such regard becomes, in course of time, a natural trait of the species. For, manifestly, regardlessness of the limits, if great and general, causes dissolution of the group. Those

varieties only can survive as gregarious varieties in which there is an inherited tendency to maintain the limits.

Yet further, there arises such general consciousness of the need for maintaining the limits, that punishments are inflicted on transgressors—not only by aggrieved members of the group, but by the group as a whole. A “rogue” elephant (always distinguished as unusually malicious) is one which has been expelled from the herd: doubtless because of conduct obnoxious to the rest—probably aggressive. It is said that from a colony of beavers an idler is banished, and thus prevented from profiting by labours in which he does not join: a statement made credible by the fact that drones, when no longer needed, are killed by worker-bees. The testimonies of observers in different countries show that a flock of crows, after prolonged noise of consultation, will summarily execute an offending member. And an eye-witness affirms that among rooks, a pair which steals the sticks from neighbouring nests has its own nest pulled to pieces by the rest.

Here, then, we see that the *a priori* condition to harmonious co-operation comes to be tacitly recognized as something like a law; and there is a penalty consequent on breach of it.

§ 10. That the individual shall experience all the consequences, good and evil, of its own nature and consequent conduct, which is that primary principle of sub-human justice whence results survival of the fittest, is, in creatures that lead solitary lives, a principle complicated only by the responsibilities of parenthood. Among them the purely egoistic actions of self-sustentation have, during the reproductive period, to be qualified by that self-subordination which the rearing of offspring necessitates, but by no other self-subordination. Among gregarious creatures of considerable intelligence, however, disciplined, as we have just seen, into due regard for the limits imposed by other's

presence, the welfare of the species, besides demanding self-subordination in the rearing of offspring, occasionally demands a further self-subordination.

We read of bisons that, during the calving season, the bulls form an encircling guard round the herd of cows and calves, to protect them against wolves and other predatory animals: a proceeding which entails on each bull some danger, but which conduces to the preservation of the species. Out of a herd of elephants about to emerge from a forest to reach a drinking place, one will first appear and look round in search of dangers, and, not discerning any, will then post some others of the herd to act as watchers; after which the main body comes forth and enters the water. Here a certain extra risk is run by the few that the many may be the safer. In a still greater degree we are shown this kind of action by a troop of monkeys, the members of which will combine to defend or rescue one of their number, or will fitly arrange themselves when retreating from an enemy—"the females, with their young, leading the way, the old males bringing up the rear . . . the place of danger"; for though in any particular case the species may not profit, since more mortality may result than would have resulted, yet it profits in the long run by the display of a character which makes attack on its groups dangerous.

Evidently, then, if by such conduct one variety of a gregarious species keeps up, or increases, its numbers, while other varieties, in which self-subordination thus directed does not exist, fail to do this, a certain sanction is acquired for such conduct. The preservation of the species being the higher end, it results that where an occasional mortality of individuals in defence of the species furthers this preservation in a greater degree than would pursuit of exclusive benefit by each individual, that which we recognize as sub-human justice may rightly have this second limitation.

§ 11. It remains only to point out the order of priority,

and the respective ranges, of these principles. The law of relation between conduct and consequence, which, throughout the animal kingdom at large, brings prosperity to those individuals which are structurally best adapted to their conditions of existence, and which, under its ethical aspect, is expressed in the principle that each individual ought to receive the good and the evil which arises from its own nature, is the primary law holding of all creatures; and is applicable without qualification to creatures which lead solitary lives, save by that self-subordination needed among the higher of them for the rearing of offspring.

Among gregarious creatures, and in an increasing degree as they co-operate more, there comes into play the law, second in order of time and authority, that those actions through which, in fulfilment of its nature, the individual achieves benefits and avoids evils, shall be restrained by the need for non-interference with the like actions of associated individuals. A substantial respect for this law in the average of cases, being the condition under which alone gregariousness can continue, it becomes an imperative law for creatures to which gregariousness is a benefit. But, obviously, this secondary law is simply a specification of that form which the primary law takes under the conditions of gregarious life; since, by asserting that in each individual the inter-actions of conduct and consequence must be restricted in the specified way, it tacitly re-asserts that these inter-actions must be maintained in other individuals, that is in all individuals.

Later in origin, and narrower in range, is the third law, that under conditions such that, by the occasional sacrifices of some members of a species, the species as a whole prospers, there arises a sanction for such sacrifices, and a consequent qualification of the law that each individual shall receive the benefits and evils of its own nature.

Finally, it should be observed that whereas the first law is absolute for animals in general, and whereas the second



law is absolute for gregarious animals, the third law is relative to the existence of enemies of such kinds that, in contending with them, the species gains more than it loses by the sacrifice of a few members; and in the absence of such enemies this qualification imposed by the third law disappears.

## CHAPTER III.

### HUMAN JUSTICE.

§ 12. The contents of the last chapter foreshadow the contents of this. As, from the evolution point of view, human life must be regarded as a further development of sub-human life, it follows that from this same point of view, human justice must be a further development of sub-human justice. For convenience the two are here separately treated, but they are essentially of the same nature, and form parts of a continuous whole.

Of man, as of all inferior creatures, the law by conformity to which the species is preserved, is that among adults the individuals best adapted to the conditions of their existence shall prosper most, and that individuals least adapted to the conditions of their existence shall prosper least—a law which, if uninterfered with, entails survival of the fittest, and spread of the most adapted varieties. And as before so here, we see that, ethically considered, this law implies that each individual ought to receive the benefits and the evils of his own nature and consequent conduct: neither being prevented from having whatever good his actions normally bring to him, nor allowed to shoulder off on to other persons whatever ill is brought to him by his actions.

To what extent such ill, naturally following from his actions, may be voluntarily borne by other persons, it does not concern us now to inquire. The qualifying effects of

pity, mercy, and generosity, will be considered hereafter in the parts dealing with "Negative Beneficence" and "Positive Beneficence." Here we are concerned only with pure Justice.

The law thus originating, and thus ethically expressed, is obviously that which commends itself to the common apprehension as just. Sayings and criticisms daily heard imply a perception that conduct and consequence ought not to be dissociated. When, of some one who suffers a disaster, it is said—"He has no one to blame but himself," there is implied the belief that he has not been inequitably dealt with. The comment on one whose misjudgment or misbehaviour has entailed evil upon him, that "he has made his own bed, and now he must lie in it," has behind it the conviction that this connexion of cause and effect is proper. Similarly with the remark—"He got no more than he deserved." A kindred conviction is implied when, conversely, there results good instead of evil. "He has fairly earned his reward;" "He has not received due recompense;" are remarks indicating the consciousness that there should be a proportion between effort put forth and advantage achieved—that justice demands such a proportion.

§ 13. The truth that justice becomes more pronounced as organization becomes higher, which we contemplated in the last chapter, is further exemplified on passing from sub-human justice to human justice. The degree of justice and the degree of organization simultaneously make advances. These are shown alike by the entire human race, and by its superior varieties as contrasted with its inferior.

We saw that a high species of animal is distinguished from a low species, in the respect that since its aggregate suffers less mortality from incidental destructive agencies, each of its members continues on the average for a longer time subject to the normal relation between conduct and consequence; and here we see that the human race as a

whole, far lower in its rate of mortality than nearly all races of inferior kinds, usually subjects its members for much longer periods to the good and evil results of well-adapted and ill-adapted conduct. We also saw that as, among the higher animals, a greater average longevity makes it possible for individual differences to show their effects for longer periods, it results that the unlike fates of different individuals are to a greater extent determined by that normal relation between conduct and consequence which constitutes justice ; and we here see that in mankind, unlikenesses of faculty in still greater degrees, and for still longer periods, work out their effects in advantaging the superior and disadvantaging the inferior in the continuous play of conduct and consequence.

Similarly is it with the civilized varieties of mankind as compared with the savage varieties. A still further diminished rate of mortality implies that there is a still larger proportion, the members of which gain good from well-adapted acts and suffer evil from ill-adapted acts. While also it is manifest that both the greater differences of longevity among individuals, and the greater differences of social position, imply that in civilized societies more than in savage societies, differences of endowment, and consequent differences of conduct, are enabled to cause their appropriate differences of results, good or evil : the justice is greater.

§ 14. More clearly in the human race than in lower races, we are shown that gregariousness establishes itself because it profits the variety in which it arises ; partly by furthering general safety and partly by facilitating sustentation. And we are shown that the degree of gregariousness is determined by the degree in which it thus subserves the interests of the variety. For where the variety is one of which the members live on wild food, they associate only in small groups : game and fruits widely distributed, can

support these only. But greater gregariousness arises where agriculture makes possible the support of a large number on a small area; and where the accompanying development of industries introduces many and various co-operations.

We come now to the truth—faintly indicated among lower beings and conspicuously displayed among human beings—that the advantages of co-operation can be had only by conformity to certain requirements which association imposes. The mutual hindrances liable to arise during the pursuit of their ends by individuals living in proximity, must be kept within such limits as to leave a surplus of advantage obtained by associated life. Some types of men, as the Abors, lead solitary lives, because their aggressiveness is such that they cannot live together. And this extreme case makes it clear that though, in many primitive groups, individual antagonisms often cause quarrels, yet the groups are maintained because their members derive a balance of benefit—chiefly in greater safety. It is also clear that in proportion as communities become developed, their division of labour complex, and their transactions multiplied, the advantages of co-operation can be gained only by a still better maintenance of those limits to each man's activities necessitated by the simultaneous activities of others. This truth is illustrated by the unprosperous or decaying state of communities in which the trespasses of individuals on one another are so numerous and great as generally to prevent them from severally receiving the normal results of their labours.

The requirement that individual activities must be mutually restrained, which we saw is so felt among certain inferior gregarious creatures that they inflict punishments on those who do not duly restrain them, is a requirement which, more imperative among men, and more distinctly felt by them to be a requirement, causes a still more marked habit of inflicting punishments on offenders. Though in

primitive groups it is commonly left to any one who is injured to revenge himself on the injurer ; and though even in the societies of feudal Europe, the defending and enforcing of his claims was in many cases held to be each man's personal concern ; yet there has ever tended to grow up such perception of the need for internal order, and such sentiment accompanying the perception, that infliction of punishments by the community as a whole, or by its established agents, has become habitual. And that a system of laws enacting restrictions on conduct, and punishments for breaking them, is a natural product of human life carried on under social conditions, is shown by the fact that in numerous nations composed of various types of mankind, similar actions, similarly regarded as trespasses, have been similarly forbidden.

Through all which sets of facts is manifested the truth, recognized practically if not theoretically, that each individual carrying on the actions which subserve his life, and not prevented from receiving their normal results, good and bad, shall carry on these actions under such restraints as are imposed by the carrying on of kindred actions by other individuals, who have similarly to receive such normal results, good and bad. And vaguely, if not definitely, this is seen to constitute what is called justice.

§ 15. We saw that among inferior gregarious creatures, justice in its universal simple form, besides being qualified by the self-subordination which parenthood implies, and in some measure by the self-restraint necessitated by association, is, in a few cases, further qualified in a small degree by the partial or complete sacrifice of individuals made in defence of the species. And now, in the highest gregarious creature, we see that this further qualification of primitive justice assumes large proportions.

No longer, as among inferior beings, demanded only by

the need for defence against enemies of other kinds, this further self-subordination is, among human beings, also demanded by the need for defence against enemies of the same kind. Having spread wherever there is food, groups of men have come to be everywhere in one another's way ; and the mutual enmities hence resulting, have made the sacrifices entailed by wars between groups, far greater than the sacrifices made in defence of groups against inferior animals. It is doubtless true with the human race, as with lower races, that destruction of the group, or the variety, does not imply destruction of the species ; and it follows that such obligation as exists for self-subordination in the interests of the group, or the variety, is an obligation of lower degree than is that of care of offspring, without fulfilment of which the species will disappear, and of lower degree than the obligation to restrain actions within the limits imposed by social conditions, without fulfilment, or partial fulfilment, of which the group will dissolve. Still, it must be regarded as an obligation to the extent to which the maintenance of the species is subserved by the maintenance of each of its groups.

But the self-subordination thus justified, and in a sense rendered obligatory, is limited to that which is required for defensive war. Only because the preservation of the group as a whole conduces to preservation of its members' lives, and their ability to pursue the objects of life, is there a reason for the sacrifice of some of its members ; and this reason no longer exists when war is offensive instead of defensive.

It may, indeed, be contended that since offensive wars initiate those struggles between groups which end in the destruction of the weaker, offensive wars, furthering the peopling of the Earth by the stronger, subserve the interests of the race. But even supposing that the conquered groups always consisted of men having smaller

mental or bodily fitness for war (which they do not ; for it is in part a question of numbers, and the smaller groups may consist of the more capable warriors), there would still be an adequate answer. It is only during the earlier stages of human progress that the development of strength, courage, and cunning, are of chief importance. After societies of considerable size have been formed, and the subordination needed for organizing them produced, other and higher faculties become those of chief importance ; and the struggle for existence carried on by violence, does not always further the survival of the fittest. The fact that but for a mere accident Persia would have conquered Greece, and the fact that the Tartar hordes very nearly overwhelmed European civilization, show that offensive war can be trusted to subserve the interests of the race only when the capacity for a high social life does not exist ; and that in proportion as this capacity develops, offensive war tends more and more to hinder, rather than to further, human welfare. In brief we may say that the arrival at a stage in which ethical considerations come to be entertained, is the arrival at a stage in which offensive war, by no means certain to further predominance of races fitted for a high social life, and certain to cause injurious moral reactions on the conquering as well as on the conquered, ceases to be justifiable ; and only defensive war retains a quasi-ethical justification.

And here it is to be remarked that the self-subordination which defensive war involves, and the need for such qualification of the abstract principle of justice as it implies, belong to that transitional state necessitated by the physical-force conflict of races ; and that they must disappear when there is reached a peaceful state. That is to say, all questions concerning the extent of such qualifications pertain to what we here distinguished as relative ethics ; and are not recognized by that absolute ethics



which is concerned with the principles of right conduct in a society formed of men fully adapted to social life.

This distinction I emphasize here because, throughout succeeding chapters, we shall find that recognition of it helps us to disentangle the involved problems of political ethics.

## CHAPTER IV.

### THE SENTIMENT OF JUSTICE.

§ 16. Acceptance of the doctrine of organic evolution determines certain ethical conceptions. The doctrine implies that the numerous organs in each of the innumerable species of animals, have been either directly or indirectly moulded into fitness for the requirements of life by constant converse with those requirements. Simultaneously, through nervous modifications, there have been developments of the sensations, instincts, emotions, and intellectual aptitudes, needed for the appropriate uses of these organs; as we see in caged rodents which exercise their jaw-muscles and incisors by purposeless gnawing, in gregarious creatures which are miserable if they cannot join their fellows, in beavers which, kept in confinement, show their passion for dam-building by heaping up whatever sticks and stones they can find.

Has this process of mental adaptation ended with primitive man? Are human beings incapable of having their feelings and ideas progressively adjusted to the modes of life imposed on them by the social state into which they have grown? Shall we suppose that the nature which fitted them to the exigencies of savage life has remained unchanged, and will remain unchanged, by the exigencies of civilized life? Or shall we suppose that this aboriginal nature, by repression of some traits and fostering of others,

is made to approach more and more to a nature which finds developed society its appropriate environment, and the required activities its normal ones? There are many believers in the doctrine of evolution who seem to have no faith in the continued adaptability of mankind. While glancing but carelessly at the evidence furnished by comparisons of different human races with one another, and of the same races in different ages, they ignore entirely the induction from the phenomena of life at large. But if there is an abuse of the deductive method of reasoning there is also an abuse of the inductive method. One who refused to believe that a new moon would in a fortnight become full and then wane, and, disregarding observations accumulated throughout the past, insisted on watching the successive phases before he was convinced, would be *considered inductive in an irrational degree*. But there might not unfairly be classed with him those who, slighting the inductive proof of unlimited adjustability, bodily and mental, which the animal kingdom at large presents, will not admit the adjustability of human nature to social life until the adjustment has taken place: nay, even ignore the evidence that it is taking place.

Here we shall assume it to be an inevitable inference from the doctrine of organic evolution, that the highest type of living being, no less than all lower types, must go on moulding itself to those requirements which circumstances impose. And we shall, by implication, assume that moral changes are among the changes thus wrought out.

§ 17. The fact that when surfeit of a favourite food has caused sickness, there is apt to follow an aversion to that food, shows how, in the region of the sensations, experiences establish associations which influence conduct. And the fact that the house in which a wife or child died, or in which a long illness was suffered, becomes so associated with painful states of mind as to be shunned, sufficiently

illustrates, in the emotional region, the mode in which actions may be determined by mental connexions formed in the course of life. When the circumstances of a species make certain relations between conduct and consequence habitual, the appropriately-linked feelings may come to characterize the species. Either inheritances of modifications produced by habit, or more numerous survivals of individuals having nervous structures which have varied in fit ways, gradually form guiding tendencies, prompting appropriate behaviour and deterring from inappropriate. The contrast between fearless birds found on islands never before visited by man, and the birds around us, which show fear of man immediately they are out of the nest, exemplifies such adaptations.

By virtue of this process there have been produced to some extent among lower creatures, and there are being further produced in man, the sentiments appropriate to social life. Aggressive actions, while they are habitually injurious to the group in which they occur, are not unfrequently injurious to the individuals committing them; since, though certain pleasures may be gained by them, they often entail pains greater than the pleasures. Conversely, conduct restrained within the required limits, calling out no antagonistic passions, favours harmonious co-operation, profits the group, and, by implication, profits the average of its individuals. Consequently, there results, other things equal, a tendency for groups formed of members having this adaptation of nature, to survive and spread.

Among the social sentiments thus evolved, one of chief importance is the sentiment of justice. Let us now consider more closely its nature.

§ 18. Stop an animal's nostrils, and it makes frantic efforts to free its head. Tie its limbs together, and its struggles to get them at liberty are violent. Chain it by the neck or leg, and it is some time before it ceases its

attempts to escape. Put it in a cage, and it long continues restless. Generalizing these instances, we see that in proportion as the restraints on actions by which life is maintained are extreme, the resistances to them are great. Conversely, the eagerness with which a bird seizes the opportunity for taking flight, and the joy of a dog when liberated, show how strong is the love of unfettered movement.

Displaying like feelings in like ways, man displays them in other and wider ways. He is irritated by invisible restraints as well as by visible ones; and as his evolution becomes higher, he is affected by circumstances and actions which in more remote ways aid or hinder the pursuit of ends. A parallel will elucidate this truth. Primitively the love of property is gratified only by possession of food and shelter, and, presently, of clothing; but afterwards it is gratified by possession of the weapons and tools which aid in obtaining these, then by possession of the raw materials that serve for making weapons and tools and for other purposes, then by possession of the coin which purchases them as well as things at large, then by possession of promises to pay exchangeable for the coin, then by a lien on a banker, registered in a pass-book. That is, there comes to be pleasure in an ownership more and more abstract and more remote from material satisfactions. Similarly with the sentiment of justice. Beginning with the joy felt in ability to use the bodily powers and gain the resulting benefits, accompanied by irritation at direct interferences, this gradually responds to wider relations: being excited now by the incidents of personal bondage, now by those of political bondage, now by those of class-privilege, and now by small political changes. Eventually this sentiment, sometimes so little developed in the Negro that he jeers at a liberated companion because he has no master to take care of him, becomes so much developed in the Englishman that the slightest infraction of some mode of formal procedure at a

public meeting or in Parliament, which cannot intrinsically concern him, is vehemently opposed because in some distant and indirect way it may help to give possible powers to un-named authorities who may perhaps impose unforeseen burdens or restrictions.

Clearly, then, the egoistic sentiment of justice is a subjective attribute which answers to that objective requirement constituting justice—the requirement that each adult shall receive the results of his own nature and consequent actions. For unless the faculties of all kinds have free play, these results cannot be gained or suffered, and unless there exists a sentiment which prompts maintenance of the sphere for this free play, it will be trenched upon and the free play impeded.

§ 19. While we may thus understand how the egoistic sentiment of justice is developed, it is much less easy to understand how there is developed the altruistic sentiment of justice. On the one hand, the implication is that the altruistic sentiment of justice can come into existence only in the course of adaptation to social life. On the other hand the implication is that social life is made possible only by maintenance of those equitable relations which imply the altruistic sentiment of justice. How can these reciprocal requirements be fulfilled?

The answer is that the altruistic sentiment of justice can come into existence only by the aid of a sentiment which temporarily supplies its place, and restrains the actions prompted by pure egoism—a pro-altruistic sentiment of justice, as we may call it. This has several components which we must successively glance at.

The first deterrent from aggression is one which we see among animals at large—the fear of retaliation. Among creatures of the same species the food obtained by one, or place of vantage taken possession of by it, is in some measure insured to it by the dread which most others feel

of the vengeance that may follow any attempt to take it away; and among men, especially during early stages of social life, it is chiefly such dread which secures for each man free scope for his activities, and exclusive use of whatever they bring him.

A further restraint is fear of the reprobation likely to be shown by unconcerned members of the group. Though in the expulsion of a "rogue" elephant from the herd, or the slaying of a sinning member of the flock by rooks or storks, we see that even among animals individuals suffer from an adverse public opinion; yet it is scarcely probable that among animals expectation of general dislike prevents encroachment. But among mankind, "looking before and after" to a greater extent, the thought of social disgrace is usually an additional check on ill-behaviour of man to man.

To these feelings, which come into play before there is any social organization, have to be added those which arise after political authority establishes itself. When a successful leader in war acquires permanent headship, and comes to have at heart the maintenance of his power, there arises in him a desire to prevent the trespasses of his people one against another; since the resulting dissensions weaken his tribe. The rights of personal vengeance and, as in feudal times, of private war, are restricted; and, simultaneously, there grow up interdicts on the acts which cause them. Dread of the penalties which follow breaches of these, is an added restraint.

Ancestor-worship in general, developing, as the society develops, into special propitiation of the dead chief's ghost, and presently the dead king's ghost, gives to the injunctions he uttered during life increased sanctity; and when, with establishment of the cult, he becomes a god, his injunctions become divine commands with dreaded punishments for breaches of them.

These four kinds of fear co-operate. The dread of retaliation, the dread of social dislike, the dread of legal

punishment, and the dread of divine vengeance, united in various proportions, form a body of feeling which checks the primitive tendency to pursue the objects of desire without regard to the interests of fellow-men. Containing none of the altruistic sentiment of justice, properly so called, this pro-altruistic sentiment of justice serves temporarily to cause respect for one another's claims, and so to make social co-operation possible.

§ 20. Creatures which become gregarious tend to become sympathetic in degrees proportionate to their intelligences. Not, indeed, that the resulting sympathetic tendency is exclusively, or even mainly, of that kind which the words ordinarily imply; for in some there is little beyond sympathy in fear, and in others little beyond sympathy in ferocity. *All that is meant is that in gregarious creatures a feeling displayed by one is apt to arouse kindred feelings in others, and is apt to do this in proportion as others are intelligent enough to appreciate the signs of the feeling.* In two chapters of the *Principles of Psychology*—"Sociality and Sympathy" and "Altruistic Sentiments"—I have endeavoured to show how sympathy in general arises, and how there is eventually produced altruistic sympathy.

The implication is, then, that the associated state having been maintained among men by the aid of the pro-altruistic sentiment of justice, there have been maintained the conditions under which the altruistic sentiment of justice itself can develop. In a permanent group there occur, generation after generation, incidents simultaneously drawing from its members manifestations of like emotions—rejoicings over victories and escapes, over prey jointly captured, over supplies of wild food discovered; as well as laments over defeats, scarcities, inclemencies, &c. And to these greater pleasures and pains felt in common by all, and so expressing themselves that each sees in others the signs of feelings like those which he has and is displaying, must be



added the smaller pleasures and pains daily resulting from meals taken together, amusements, games, and from the not infrequent adverse occurrences which affect several persons at once. Thus there is fostered that sympathy which makes the altruistic sentiment of justice possible.

But the altruistic sentiment of justice is slow in assuming a high form, partly because its primary component does not become highly developed until a late phase of progress, partly because it is relatively complex, and partly because it implies a stretch of imagination not possible for low intelligences. Let us glance at each of these reasons.

Every altruistic feeling presupposes experience of the corresponding egoistic feeling. As, until pain has been felt there cannot be sympathy with pain, and as one who has no ear for music cannot enter into the pleasure which music gives to others; so, the altruistic sentiment of justice can arise only after the egoistic sentiment of justice has arisen. Hence where this has not been developed in any considerable degree, or has been repressed by a social life of an adverse kind, the altruistic sentiment of justice remains rudimentary.

The complexity of the sentiment becomes manifest on observing that it is not concerned only with concrete pleasures and pains, but is concerned mainly with certain of the circumstances under which these are obtainable or preventible. As the egoistic sentiment of justice is gratified by maintenance of those conditions which render achievement of satisfactions unimpeded, and is irritated by the breaking of those conditions, it results that the altruistic sentiment of justice requires for its excitement not only the ideas of such satisfactions but also the ideas of those conditions which are in the one case maintained and in the other case broken.

Evidently, therefore, to be capable of this sentiment in a developed form, the faculty of mental representation must be relatively great. Where the feelings with which there is to be sympathy are simple pleasures and pains, the

higher gregarious animals occasionally display it: pity and generosity are from time to time felt by them as well as by human beings. But to conceive simultaneously not only the feelings produced in another, but the plexus of acts and relations involved in the production of such feelings, presupposes the putting together in thought of more elements than an inferior creature can grasp at the same time. And when we come to those most abstract forms of the sentiment of justice which are concerned with public arrangements, we see that only the higher varieties of men are capable of so conceiving the ways in which good or bad institutions and laws will eventually affect their spheres of action, as to be prompted to support or oppose them; and that only among these, therefore, is there excited, under such conditions, that sympathetic sentiment of justice which makes them defend the political interests of fellow-citizens.

There is, of course, a close connexion between the sentiment of justice and the social type. Predominant militancy, by the coercive form of organization it implies, alike in the fighting body and in the society which supports it, affords no scope for the egoistic sentiment of justice, but, contrariwise, perpetually tramples on it; and, at the same time, the sympathies which originate the altruistic sentiment of justice are perpetually seared by militant activities. On the other hand, in proportion as the *régime* of *status* is replaced by the *régime* of contract, or, in other words, as fast as voluntary co-operation which characterizes the industrial type of society, becomes more general than compulsory co-operation which characterizes the militant type of society, individual activities become less restrained, and the sentiment which rejoices in the scope for them is encouraged; while, simultaneously, the occasions for repressing the sympathies become less frequent. Hence, during warlike phases of social life the sentiment of justice retrogrades, while it advances during peaceful phases,

and can reach its full development only in a permanently peaceful state.\*

\* Permanent peace does in a few places exist, and where it exists the sentiment of justice is exceptionally strong and sensitive. I am glad to have again the occasion for pointing out that among men called uncivilized, there are some, distinguished by the entire absence of warlike activities, who in their characters put to shame the peoples called civilized. In *Political Institutions*, §§ 437 and 574, I have given eight examples of this connexion of facts, taken from races of different types.

## CHAPTER V.

### THE IDEA OF JUSTICE.

§ 21. While describing the sentiment of justice the way has been prepared for describing the idea of justice. Though the two are intimately connected they may be clearly distinguished.

One who has dropped his pocket-book and, turning round, finds that another who has picked it up will not surrender it, is indignant. If the goods sent home by a shopkeeper are not those he purchased, he protests against the fraud. Should his seat at a theatre be usurped during a momentary absence, he feels himself ill-used. Morning noises from a neighbour's poultry he complains of as grievances. And, meanwhile, he sympathizes with the anger of a friend who has been led by false statements to join a disastrous enterprise, or whose action at law has been rendered futile by a flaw in the procedure. But though, in these cases, his sense of justice is offended, he may fail to distinguish the essential trait which in each case causes the offence. He may have the sentiment of justice in full measure while his idea of justice remains vague.

This relation between sentiment and idea is a matter of course. The ways in which men trespass on one another become more numerous in their kinds, and more involved,

as society grows more complex ; and they must be experienced in their many forms, generation after generation, before analysis can make clear the essential distinction between legitimate acts and illegitimate acts. The idea emerges and becomes definite in the course of the experiences that action may be carried up to a certain limit without causing resentment from others, but if carried beyond that limit produces resentment. Such experiences accumulate ; and gradually, along with repugnance to the acts which bring reactive pains, there arises a conception of a limit to each kind of activity up to which there is freedom to act. But since the kinds of activity are many and become increasingly various with the development of social life, it is a long time before the general nature of the limit common to all cases can be conceived.\*

A further reason for this slowness of development should be recognized. Ideas as well as sentiments must, on the average, be adjusted to the social state. Hence, as war has been frequent or habitual in nearly all societies, such ideas of justice as have existed have been perpetually confused by the conflicting requirements of internal amity and external enmity.

§ 22. Already it has been made clear that the idea of justice, or at least the human idea of justice, contains two

\* The genesis of the idea of simple limits to simple actions is exhibited to us by intelligent animals, and serves to elucidate the process in the case of more complex actions and less obvious limits. I refer to the dogs of Constantinople, among which, if not between individuals yet between groups of individuals, there are tacit assertions of claims and penalties for invasions of claims. This well-known statement has been recently verified in a striking way in the work of Major E. C. Johnson, *On the Track of the Crescent*. He says (pp. 58-9) :—" One evening I was walking [in Constantinople] with an English officer of gendarmerie when a bitch came up and licked his hand. . . . She followed us a little way, and stopped short in the middle of the street. She wagged her tail, and looked wistfully after us, but never stirred when we called her. A few nights afterwards . . . the same bitch . . . recognized me . . . and followed me to the boundary of her district."

elements. On the one hand, there is that positive element implied by each man's recognition of his claims to unimpeded activities and the benefits they bring. On the other hand, there is that negative element implied by the consciousness of limits which the presence of other men having like claims necessitates. Two opposite traits in these two components especially arrest the attention.

Inequality is the primordial ideal suggested. For if the principle is that each shall receive the benefits and evils due to his own nature and consequent conduct, then, since men differ in their powers, there must be differences in the results of their conduct. Unequal amounts of benefit are implied.

Mutual limitations to men's actions suggest a contrary idea. When it is seen that if each pursues his ends regardless of his neighbour's claims, quarrels must result, there arises the consciousness of bounds which must be set to the doings of each to avoid the quarrels. Experience shows that these bounds are on the average the same for all. And the thought of spheres of action bounded by one another, which hence results, involves the conception of equality.

Unbalanced appreciations of these two factors in human justice, lead to divergent moral and social theories, which we must now glance at.

§ 23. In some of the rudest men the appreciations are no higher than those which we see among inferior gregarious animals. Here the stronger takes what he pleases from the weaker without exciting general reprobation—as among the Dogribs; while, elsewhere, there is practised and tacitly approved something like communism—as among the Fuegians. But where habitual war has developed political organization, the idea of inequality becomes predominant. If not among the conquered, who are made slaves, yet among the conquerors, who naturally

think of that which conduces to their interest as that which *ought* to be, there is fostered this element in the conception of justice which implies that superiority shall have the benefits of superiority.

Though the Platonic dialogues may not be taken as measures of Greek belief, yet we may gather from them what beliefs were general. Glaucon, describing a current opinion, says:—

“This, as they affirm, is the origin and nature of justice:—there is a mean or compromise between the best of all, which is to do and not to suffer injustice, and the worst of all, which is to suffer without the power of retaliation; and justice, being the mean between the two, is tolerated not as good, but as the lesser evil.” And immediately afterwards it is said that men “are only diverted into the path of justice by the force of law.”\*

In this significant passage several things are to be noted. There is first a recognition of the fact, above indicated, that at an early stage the practice of justice is initiated by the dread of retaliation, and the conviction, suggested by experience, that on the whole it is desirable to avoid aggression and to respect the limit which compromise implies: there is no thought of intrinsic flagitiousness in aggression, but only of its impolicy. Further, the limit to each man's actions, described as “a mean or compromise,” and respect for which is called “the path of justice,” is said to be established only “by the force of law.” Law is not considered as an expression of justice otherwise cognizable, but as itself the source of justice; and hence results the meaning of a preceding proposition, that it is just to obey the law. Thirdly, there is an implication that were it not for retaliation and legal penalties, the stronger might with propriety take advantage of the weaker. There is a half-expressed belief that superiority ought to have all the advantages which superiority can take: the idea of inequality occupies a prominent place, while the idea of equality makes no definite appearance.

What was the opinion of Plato, or rather of Socrates, on the matter is not very easy to find out. Greek ideas on

many matters had not yet reached the stage of definiteness, and throughout the dialogues the thinking is hazy. Justice, which is in some places exemplified by honesty, is elsewhere the equivalent of virtue at large, and then (to quote from Jowett's summary) is regarded as "universal order or well being, first in the State, and secondly in the individual." This last, which is the finished conclusion, implies established predominance of a ruling class and subjection of the rest. Justice consists "in each of the three classes doing the work of its own class:" carpenter, shoemaker, or what not, "doing each his own business, and not another's;" and all obeying the class whose business it is to rule.\* Thus the idea of justice is developed from the idea of inequality. Though there is some recognition of equality of positions and of claims among members of the same class, yet the regulations respecting community of wives &c. in the guardian-class, have for their avowed purpose to establish, even within that class, unequal privileges for the benefit of the superior.

That the notion of justice had this general character among the Greeks, is further shown by the fact that it recurs in Aristotle. In Chapter V. of his *Politics*, he concludes that the relation of master and slave is both advantageous and just.

But now observe that though in the Greek conception of

\* On another page there is furnished a typical example of Socratic reasoning. It is held to be a just "principle that individuals are neither to take what is another's, nor to be deprived of what is their own." From this it is inferred that justice consists in "having and *doing* what is a man's own;" and then comes the further inference that it is unjust for one man to assume another's occupation, and "force his way" out of one class into another. Here, then, because a man's own property and his own occupation are both called his own, the same conclusion is drawn concerning both. Two fallacies are involved—the one that a man can "own" a trade in the same way that he owns a coat, and the other that because he may not be *deprived* of the coat he must be *restricted* to the trade. The Platonic dialogues are everywhere vitiated by fallacies of this kind, caused by confounding words with things—unity of name with unity of nature.



justice there predominates the idea of inequality, while the idea of equality is inconspicuous, the inequality refers, not to the natural achievement of greater rewards by greater merits, but to the artificial apportionment of greater rewards to greater merits. It is an inequality mainly established by authority. The gradations in the civil organization are of the same nature as those in the military organization. Regimentation pervades both; and the idea of justice is conformed to the traits of the social structure.

And this is the idea of justice proper to the militant type at large, as we are again shown throughout Europe in subsequent ages. It will suffice to point out that along with the different law-established positions and privileges of different ranks, there went gradations in the amounts paid in composition for crimes, according to the rank of the injured. And how completely the notion of justice was determined by the notion of rightly-existing inequalities, is shown by the condemnation of serfs who escaped into the towns, and were said to have "unjustly" withdrawn themselves from the control of their lords.

Thus, as might be expected, we find that while the struggle for existence between societies is going on actively, recognition of the primary factor in justice which is common to life at large, human and sub-human, is very imperfectly qualified by recognition of the secondary factor. That which we may distinguish as the brute element in the conception is but little mitigated by the human element.

§ 24. All movements are rhythmical, and, among others, social movements, with their accompanying doctrines. After that conception of justice in which the idea of inequality unduly predominates, comes a conception in which the idea of equality unduly predominates.

A recent example of such reactions is furnished by the ethical theory of Bentham. As is shown by the following

extract from Mr. Mill's *Utilitarianism* (p. 91), the idea of inequality here entirely disappears.

The Greatest-Happiness Principle is a mere form of words without rational signification, unless one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's. Those conditions being supplied, Bentham's dictum, "everybody to count for one, nobody for more than one," might be written under the principle of utility as an explanatory commentary.

Now though Bentham ridicules the taking of justice as our guide, saying that while happiness is an end intelligible to all, justice is a relatively unintelligible end, yet he tacitly asserts that his principle—"everybody to count for one, nobody for more than one," is just; since, otherwise, he would be obliged to admit that it is unjust, and we may not suppose he would do so. Hence the implication of his doctrine is that justice means an equal apportionment of the benefits, material and immaterial, which men's activities bring. There is no recognition of the propriety of inequalities in men's shares of happiness, consequent on inequalities in their faculties or characters.

This is the theory which Communism would reduce to practice. From one who knows him, I learn that Prince Krapotkin blames the English socialists because they do not propose to act out the rule popularly worded as "share and share alike." In a recent periodical, M. de Laveleye summed up the communistic principle as being "that the individual works for the profit of the State, to which he hands over the produce of his labour for equal division among all." In the communistic Utopia described in Mr. Bellamy's *Looking Backward*, it is held that each "shall make the same effort," and that if by the same effort, bodily or mental, one produces twice as much as another, he is not to be advantaged by the difference. The intellectually or physically feeble are to be quite as well off as others: the assertion being that the existing *régime* is one of "robbing the incapable class of their plain right in leaving them unprovided for."

The principle of inequality is thus denied absolutely. It

is assumed to be unjust that superiority of nature shall bring superiority of results, or, at any rate, superiority of material results; and as no distinction appears to be made in respect either of physical qualities or intellectual qualities or moral qualities, the implication is not only that strong and weak shall fare alike, but that foolish and wise, worthy and unworthy, mean and noble, shall do the same. For if, according to this conception of justice, defects of nature, physical or intellectual, ought not to count, neither ought moral defects, since they are all primarily inherited.

And here, too, we have a deliberate abolition of that cardinal distinction between the ethics of the family and the ethics of the State, emphasized at the outset: an abolition which, as we saw, must eventuate in decay and disappearance of the species or variety in which it takes place.

§ 25. After contemplating these divergent conceptions of justice, in which the ideas of inequality and equality almost or quite exclude one another, we are now prepared for framing a true conception of justice.

In other fields of thought it has fallen to my lot to show that the right view is obtained by co-ordinating the antagonistic wrong views. Thus, the association-theory of intellect is harmonized with the transcendental theory on perceiving that when, to the effects of individual experiences, are added the inherited effects of *experiences received by all* ancestors, the two views become one. So, too, when the moulding of feelings into harmony with requirements, generation after generation, is recognized as causing an adapted moral nature, there results a reconciliation of the expediency-theory of morals with the intuitionist theory. And here we see that a like mutual correction occurs with this more special component of ethics now before us.

For if each of these opposite conceptions of justice is accepted as true in part, and then supplemented by the other, there results that conception of justice which arises on contemplating the laws of life is carried on in the social

state. The equality concerns the mutually-limited spheres of action which must be maintained if associated men are to co-operate harmoniously. The inequality concerns the results which each may achieve by carrying on his actions within the implied limits. No incongruity exists when the ideas of equality and inequality are applied the one to the bounds and the other to the benefits. Contrariwise, the two may be, and must be, simultaneously asserted.

Other injunctions which ethics has to utter do not here concern us. There are the self-imposed requirements and limitations of private conduct, forming that large division of ethics treated of in Part III.; and there are the demands and restraints included under Negative Beneficence and Positive Beneficence, to be hereafter treated of, which are at once self-imposed and in a measure imposed by public opinion. But here we have to do only with those claims and those limits which have to be maintained as conditions to harmonious co-operation, and which alone are to be enforced by society in its corporate capacity.

§ 26. Any considerable acceptance of so definite an idea of justice is not to be expected. It is an idea appropriate to an ultimate state, and can be but partially entertained during transitional states; for the prevailing ideas must, on the average, be congruous with existing institutions and activities.

The two essentially-different types of social organization, militant and industrial, based respectively on *status* and on contract, have, as we have above seen, feelings and beliefs severally adjusted to them; and the mixed feelings and beliefs appropriate to intermediate types, have continually to change according to the ratio between the one and the other. As I have elsewhere shown,\* during the thirty—or rather forty—years' peace, and consequent weakening of the militant organization, the idea of justice became clearer:

\* *Principles of Sociology*, §§ 266-7; *Political Institutions*, §§ 573-4 and 559.

coercive regulations were relaxed and each man left more free to make the best of himself. But since then, the re-development of militancy has caused reversal of these changes; and, along with nominal increases of freedom, actual diminutions of freedom have resulted from multiplied restrictions and exactions. The spirit of regimentation proper to the militant type, has been spreading throughout the administration of civil life. An army of workers with appointed tasks and apportioned shares of products, which socialism, knowingly or unknowingly, aims at, shows in civil life the same characters as an army of soldiers with prescribed duties and fixed rations shows in military life; and every act of parliament which takes money from the individual for public purposes and gives him public benefits, tends to assimilate the two. Germany best shows this kinship. There, where militancy is most pronounced, and where the regulation of citizens is most elaborate, socialism is most highly developed; and from the head of the German military system has now come the proposal of regimental regulations for the working classes throughout Europe.

Sympathy which, a generation ago, was taking the shape of justice, is relapsing into the shape of generosity; and the generosity is exercised by inflicting injustice. Daily legislation betrays little anxiety that each shall have that which belongs to him, but great anxiety that he shall have that which belongs to somebody else. For while no energy is expended in so reforming our judicial administration that everyone may obtain and enjoy all he has earned, great energy is shown in providing for him and others benefits which they have not earned. Along with that miserable *laissez-faire* which calmly looks on while men ruin themselves in trying to enforce by law their equitable claims, there goes activity in supplying them, at other men's cost, with *gratis* novel-reading!

## CHAPTER VI.

### THE FORMULA OF JUSTICE.

§ 27. After tracing up the evolution of justice in its simple form, considered objectively as a condition to the maintenance of life; after seeing how justice as so considered becomes qualified by a new factor when the life is gregarious, more especially in the human race; and after observing the corresponding subjective products—the sentiment of justice and the idea of justice—arising from converse with this condition; we are now prepared for giving to the conclusion reached a definite form. We have simply to find a precise expression for the compromise described in the last chapter.

The formula has to unite a positive element with a negative element. It must be positive in so far as it asserts for each that, since he is to receive and suffer the good and evil results of his actions, he must be allowed to act. And it must be negative in so far as, by asserting this of everyone, it implies that each can be allowed to act only under the restraint imposed by the presence of others having like claims to act. Evidently the positive element is that which expresses a pre-requisite to life in general, and the negative element is that which qualifies this pre-requisite in the way required when, instead of one life carried on alone, there are many lives carried on together.

Hence, that which we have to express in a precise way,

is the liberty of each limited only by the like liberties of all. This we do by saying:—Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man.

§ 28. A possible misapprehension must be guarded against. There are acts of aggression which the formula is presumably intended to exclude, which apparently it does not exclude. It may be said that if A strikes B, then, so long as B is not debarred from striking A in return, no greater freedom is claimed by the one than by the other; or it may be said that if A has trespassed on B's property, the requirement of the formula has not been broken so long as B can trespass on A's property. Such interpretations, however, mistake the essential meaning of the formula, which we at once see if we refer back to its origin.

For the truth to be expressed is that each in carrying on the actions which constitute his life for the time being, and conduce to the subsequent maintenance of his life, shall not be impeded further than by the carrying on of those kindred actions which maintain the lives of others. It does not countenance a superfluous interference with another's life, committed on the ground that an equal interference may balance it. Such a rendering of the formula is one which implies greater deductions from the lives of each and all than the associated state necessarily entails; and this is obviously a perversion of its meaning.

If we bear in mind that though not the immediate end, the greatest sum of happiness is the remote end, we see clearly that the sphere within which each may pursue happiness has a limit, on the other side of which lie the similarly limited spheres of action of his neighbours; and that he may not intrude on his neighbour's spheres on condition that they may intrude on his. Instead of justifying aggression and counter-aggression, the intention of the

formula is to fix a bound which may not be exceeded on either side.

§ 29. And here, on this misapprehension and this rectification, an instructive comment is yielded by the facts of social progress. For they show that, in so far as justice is concerned, there has been an advance from the incorrect interpretation to the correct interpretation.

In early stages we see habitual aggression and counter-aggression : now between societies and now between individuals. Neighbouring tribes fight about the limits to their territories, trespassing first on one side and then on the other ; and further fights are entailed by the requirement that mortality suffered shall be followed by mortality inflicted. In such acts of revenge and re-revenge there is displayed a vague recognition of equality of claims. This tends towards recognition of definite limits, alike in respect of territory and in respect of bloodshed ; so that in some cases a balance is maintained between the numbers of deaths on either side.

Along with this growing conception of inter-tribal justice goes a growing conception of justice among members of each tribe. At first it is the fear of retaliation which causes such respect for one another's persons and possessions as exists. The idea of justice is that of a balancing of injuries—"an eye for an eye and a tooth for a tooth." This remains the idea during early stages of civilization. After justice, as so conceived, ceases to be enforced by the aggrieved person himself, it is this which he asks to have enforced by the constituted authority. The cry to the ruler for justice is the cry for punishment—for the infliction of an injury at least as great as the injury suffered, or, otherwise, for a compensation equivalent to the loss. Thus the equality of claims is but tacitly asserted in the demand to have rectified, as far as may be, the breaches of equality.



How there tends gradually to emerge from this crude conception of justice the finished conception of justice, it seems scarcely needful to explain. The true idea is generated by experience of the evils which accompany the false idea. Naturally, the perception of the right restraints on conduct becomes clearer as respect for these restraints is forced on men, and so rendered more habitual and more general. Men's incursions into one another's spheres constitute a kind of oscillation, which, violent at the outset, becomes gradually less with the progress towards a relatively peaceful state of society. As the oscillations decrease there is an approach to equilibrium; and along with this approach to equilibrium comes approach to a definite theory of equilibrium.

Thus that primitive idea of justice in which aggression is to be balanced by counter-aggression, fades from thought as fast as it disappears from practice; and there comes the idea of justice here formulated, in which are recognized such limitations of conduct as exclude aggressions altogether.

NOTE. For the views of Kant concerning the ultimate principle of Right, see Appendix A.

## CHAPTER VII.

### THE AUTHORITY OF THIS FORMULA.

§ 30. Before going further we must contemplate this formula under all its aspects, for the purpose of seeing what may be said against it as well as what may be said in its favour.

By those who have been brought up in the reigning school of politics and morals, nothing less than scorn is shown for every doctrine which implies restraint on the doings of immediate expediency or what appears to be such. Along with avowed contempt for "abstract principles" and generalizations, there goes unlimited faith in a motley assemblage of nominees of caucuses, ruled by ignorant and fanatical wire-pullers; and it is thought intolerable that its judgments should be in any way subordinated by deductions from ethical truths.

Strangely enough we find in the world of science, too, this approval of political empiricism and disbelief in any other guidance. Though it is a trait of the scientific mind to recognize causation as universal, and though this involves a tacit admission that causation holds throughout the actions of incorporated men, this admission remains a dead letter. Notwithstanding the obvious fact that if there is no causation in public affairs one course must be as good as another; and notwithstanding the obvious fact

that to repudiate this implication is to say that some cause determines the goodness or badness of this or that policy; no effort is made to identify the causation. Contrariwise, there is ridicule of those who attempt to find a definite expression for the fundamental principle of harmonious social order. The differences among their views are emphasized, rather than the traits which their views have in common; just as, by adherents of the current creed, the differences among men of science are emphasized, instead of their essential agreements.

Manifestly, then, before proceeding we must deal with the more important objections urged against the formula reached in the last chapter.

§ 31. Every kind of evolution is from the indefinite to the definite; and one of the implications is that a distinct conception of justice can have arisen but gradually. Already the advance towards a practical recognition of justice has been shown to imply a corresponding advance towards theoretical recognition of it. It will be desirable here to observe more closely this growth of the consciousness that the activities carried on for self-conservation by each, are to be restrained by the like activities of all.

And first let us note a fact which might have been fitly included at the close of the last chapter—the fact that where men are subject to the discipline of a peaceful social life only, uninterfered with by the discipline which inter-social antagonisms entail, they quickly develop this consciousness. Entirely pacific tribes, uncivilized in the common sense of the word as some of them are, show a perception of that which constitutes equity, far clearer than the perception displayed by civilized peoples, among whom the habits of industrial life are qualified more or less largely by the habits of militant life. The amiable and conscientious Lepcha, who, while he does not desire to be killed himself, refuses absolutely to assist in killing others; the Hos full of social virtues, who may be driven almost to suicide

by the suspicion that he has committed a theft; the lowly Wood-Veddah, who can scarcely conceive it possible that one man should willingly hurt another, or take that which does not belong to him;—these and sundry others show that though there is not intelligence enough to frame a conception of the fundamental social law, there is yet a strong sentiment responding to this law, and an understanding of its special applications. Where the conditions are such as do not require that respect for the claims of fellow-tribesmen shall go along with frequent tramplings on the claims of men outside the tribe, there grow up simultaneously in each individual a regard for his own claims and a regard for the claims of other individuals.

It is only where the ethics of amity are entangled with the ethics of enmity, that thoughts about conduct are confused by the necessities of compromise. The habit of aggression outside the society is at variance with the habit of non-aggression inside the society, and at variance with recognition of the law implied by non-aggression. A people which gives to its soldiers the euphemistic title “defenders of their country,” and then exclusively uses them as invaders of other countries—a people which so far appreciates the value of life that within its bounds it forbids prize-fights, but beyond its bounds frequently takes scores of lives to avenge one life—a people which at home cannot tolerate the thought that inferiority shall bear the self-inflicted evils of inferiority, but abroad has no compunction in using bullet and bayonet to whatever extent is needful for conquest of the uncivilized, arguing that the inferior should be replaced by the superior;—such a people must think crookedly about the ultimate principles of right and wrong. Now enunciating the code appropriate to its internal policy and now the code appropriate to its external policy, it cannot entertain a consistent set of ethical ideas. All through the course of that conflict of races which, by peopling the Earth with the strongest, has been a preli-

minary to high civilization, there have gone on these incongruous activities necessitating incongruous sets of beliefs, and making a congruous set of beliefs inadmissible.

Nevertheless, where the conditions have allowed, the conception of justice has slowly evolved to some extent, and found for itself approximately true expressions. In the Hebrew commandments we see interdicts which, while they do not overtly recognize the positive element in justice, affirm in detail its negative element—specify limits to actions, and, by prescribing these limits for all Hebrews, tacitly assert that life, property, good name, &c., must be respected in one as in another. In a form which makes no distinction between generosity and justice, the Christian maxim—"Do unto others as ye would that others should do unto you," vaguely implies the equality of men's claims—implies it, indeed, in too sweeping a manner, since it recognizes no reason for inequality in the shares of good respectively appropriate to men: there is in it no direct recognition of any claim which each has to the results of his own activities, but only an implied recognition of such claims in the persons of others, and by implication a prescribing of limits. Taking no note of intermediate forms of the conception, we may instance among modern forms the one which it took in the mind of Kant. His rule—"Act only on that maxim whereby thou canst at the same time will that it should become a universal law," is, indeed, an allotropic form of the Christian rule. The suggestion that every other man must be imagined to act after a manner similar to the manner proposed, joined with the tacit implication that if suffering would be caused, the act should not be performed (Kant is classed as an anti-utilitarian!), indirectly assumes that the welfares of other men are to be considered as severally of like values with the welfare of the actor—an assumption which, while it covers the requirements of Justice, covers much more.

But now leaving these indications of the beliefs of those

who have approached the question from the religious side and from the ethical side, let us consider the beliefs of those who have approached it from the legal side.

§ 32. Of course, when jurists set forth first principles, or appeal to them, they have in mind the bases of justice, whether they use the word justice or not; since systems of justice, considered in general or in detail, form their subject matters of their works. This premised, let us observe the doctrines from time to time enunciated.

Sir Henry Maine, speaking of certain dangers which threatened the development of Roman law, says :—

“But at any rate they had adequate protection in their theory of Natural Law. For the Natural Law of the juriconsults was distinctly conceived by them as a system which ought gradually to absorb civil laws, without superseding them so long as they remained unrepealed. . . . The value and serviceableness of the conception arose from its keeping before the mental vision a type of perfect law, and from its inspiring the hope of an indefinite approximation to it.” (*Ancient Law*, pp. 76-7, 3rd edition.)

In the spirit of these Roman lawyers, one of our early judges of high repute, Chief Justice Hobart, uttered the emphatic assertion—

“Even an Act of Parliament made against natural equity, as to make a man Judge in his own case, is void in itself, for *jura naturæ sunt immutabilia*, and they are *leges legum*.” (*Hobart's Reports*, Lond. 1641, p. 120.)

So said a great authority of later date. Dominated by a creed which taught that natural things are supernaturally ordained, Blackstone wrote :—

“This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other . . . no human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.” (*Chitty's Blackstone*, Vol. I., pp. 37-8.)

Of like character is another verdict, given by one who treated of legislation from a philosophical point of view. Sir James Mackintosh defines a law of nature as being—

“a supreme, invariable, and uncontrollable rule of conduct to all men . . . It is ‘the law of nature,’ because its general precepts are essentially adapted to promote the happiness of man . . . because it is discoverable by natural reason, and suitable to our natural constitution; and because its fitness and

wisdom are founded on the general nature of human beings, and not on any of those temporary and accidental situations in which they may be placed." (Mackintosh's *Miscellaneous Works*, Vol. I., p. 346.)

Even the despotically-minded Austin, idolized by the lawyers of our days as having elaborated a theory of unlimited legislative authority, is obliged to confess that the ultimate justification for the governmental absolutism he defends, is ethical. Behind the authority, monarchical, oligarchic, or parliamentary, which enacts laws represented as supreme, there is at length recognized an authority to which it is subordinate—an authority, therefore, which is not derived from human law, but is above human law,—an authority which is by implication ascribed, if not to divine enactment, then to the nature of things.

Paying some respect to these *dicta* (to which I may add that of the German jurists with their *Naturrecht*) does not imply unreasoning credulity. We may reasonably suspect that, however much they may be in form open to criticism, they are true in essence.

§ 33. "But these are *a priori* beliefs," will be the contemptuous comment of many. "They all exemplify that vicious mode of philosophizing which consists in evolving truths out of the depths of one's own consciousness," will be said by those who hold that general truths can be reached only by conscious induction. Curiously illustrating the law that all movement is rhythmical, the absolute faith of past times in *a priori* reasoning, has given place to absolute disbelief; and now nothing is to be accepted unless it is reached *a posteriori*. Any one who contemplates the average sweep of human progress, may feel tolerably certain that this violent reaction will be followed by a re-reaction; and he may infer that both of these antithetical modes of reasoning, while they have their abuses, have also their uses.

Whence come *a priori* beliefs—how happen they to arise?

I do not of course refer to beliefs peculiar to particular persons, which may be results of intellectual perversions. I refer to those which are general, if not universal—beliefs which all, or nearly all, do not profess to base on evidence, and yet which they hold to be certain. The origin of such beliefs is either natural or supernatural. If supernatural, then unless, by believers in a devil, they are regarded as diabolically insinuated into men to mislead them, they must be regarded as divinely implanted for purposes of guidance, and therefore to be trusted. If, not satisfied with an alleged supernatural derivation, we ask for a natural derivation, then our conclusion must be that these modes of thought are determined by converse with the relations of things. One who adheres to the current creed with its good and evil agents, is not without a feasible reason for denying the value of *a priori* beliefs; but one who accepts the doctrine of Evolution is obliged, if he is consistent, to admit that *a priori* beliefs entertained by men at large, must have arisen, if not from the experiences of each individual, then from the experiences of the race. When, to take a geometrical illustration, it is affirmed that two straight lines cannot inclose a space; and when it is admitted, as it must be, that this truth cannot be established *a posteriori*, since not in one case, still less in many cases, can lines be pursued out into infinity for the purpose of observing what happens to the space between them; then the inevitable admission must be that men's experiences of straight lines (or rather, having regard to primitive times, let us say objects approximately straight) have been such as to make impossible the conception of space as inclosed by two straight lines,—have been such as to make it imperative to think of the lines as bending before the space can be inclosed. Unquestionably, on the Evolution-hypothesis, this fixed intuition must have been established by that intercourse with things which, throughout an enormous past, has, directly or indirectly, determined the organization of the nervous



system and certain resulting necessities of thought; and the *a priori* beliefs determined by these necessities differ, from *a posteriori* beliefs simply in this, that they are products of the experiences of innumerable successive individuals instead of the experiences of a single individual.

If, then, from the Evolution point of view, this is undoubtedly so with those simple cognitions which concern Space, Time, and Number, must we not infer that it is so, in large measure, with those more complex cognitions which concern human relations? I say "in large measure;" partly because the experiences are in this case far more involved and superficially varied, and cannot have produced anything like such definite effects on the nervous organization; and partly because, instead of reaching back through an immeasurable series of ancestral beings, they reach back through a part of the human race only. For these experiences, hardly traceable during early stages, become marked and coherent only where amicable social co-operation forms a considerable factor in social life. Hence these cognitions must be comparatively indefinite.

The qualification to be therefore made is that these ethical intuitions, far more than the mathematical intuitions, have to be subjected to methodic criticism. Even the judgments of immediate perception respecting straight lines, curves, angles, and so forth, have to be tested in ways devised by conscious reason: one line is perceived to be perpendicular to another with approximate truth, but complete perpendicularity can be ascertained only by the aid of a geometrical theorem. Evidently, then, the relatively vague internal perceptions which men have of right human relations, are not to be accepted without deliberate comparisons, rigorous cross-examinations, and careful testings of all kinds: a conclusion made obvious by the numerous minor disagreements which accompany the major agreement.

Thus even had the foregoing *dicta*, and along with them the law of equal freedom as recently formulated, no other

than *a priori* derivations (and this is far from being the fact) it would still be rational to regard them as adumbrations of a truth, if not literally true.

§ 34. But now mark that those who, in this case, urge against a system of thought the reproach that it sets out with an *a priori* intuition, may have the reproach hurled back upon them with more than equal force.

Alike in philosophy, in politics, and in science, we may see that the inductive school has been carried by its violent reaction against the deductive school to the extreme of assuming that conscious induction suffices for all purposes, and that there is no need to take anything for granted. Though giving proof of an alleged truth consists in showing that it is included in some wider established truth, and though, if this wider truth is questioned, the process is repeated by demonstrating that a still wider truth includes it; yet it is tacitly assumed that this process may go on for ever without reaching a widest truth, which cannot be included in any other, and therefore cannot be proved. And the result of making this unthinking assumption is the building up of theories which, if they have not *a priori* beliefs as their bases, have no bases at all. This we shall find to be the case with the utilitarian systems of ethics and politics.\*

For what is the ultimate meaning of expediency? When it is proposed to guide ourselves empirically, towards what

\* There are some who not only decline to admit any truths as necessary, but deny necessity itself; apparently without consciousness of the fact that since, in reasoning, every step from premises to conclusion has no other warrant than perception of the necessity of dependence, to deny necessity is to deny the validity of every argument, including that by which it is proposed to prove the absence of necessity! I recently read a comment on the strange resurrection of a doctrine said to have been long ago killed. Doubtless remarkable enough, if true. I know only one thing more remarkable, and that is the way in which a system of thought may be seen going about in high spirits after having committed suicide!

are we to guide ourselves? If our course must always be determined by the merits of the case, by what are the merits to be judged? "By conduciveness to the welfare of society, or the good of the community," will be the answer. It will not be replied that the merit to be estimated means increase of misery; it will not be replied that it means increase of a state of indifference, sensational and emotional; and it must therefore be replied that it means increase of happiness. By implication, if not avowedly, greatest happiness is the thing to be achieved by public action, or private action, or both. But now whence comes this postulate? Is it an inductive truth? Then where and by whom has the induction been drawn? Is it a truth of experience derived from careful observations? Then what are the observations, and when was there generalized that vast mass of them on which all politics and morals should be built? Not only are there no such experiences, no such observations, no such induction, but it is impossible that any should be assigned. Even were the intuition universal, which it is not (for it has been denied by ascetics in all ages and places, and is demurred to by an existing school of moralists), it would still have no better warrant than that of being an immediate *dictum* of consciousness.

More than this is true. There is involved a further belief no less *a priori*. Already I have referred to Bentham's rule—"Everybody to count for one, nobody for more than one," joined with Mr. Mill's comment that the greatest-happiness principle is meaningless unless "one person's happiness . . . is counted for exactly as much as another's." Hence the Benthamite theory of morals and politics posits this as a fundamental, self-evident truth. And this tacit assumption that one man's claim to happiness is as good as another's, has been recently put into more concrete shape by Mr. Bellamy, who says:—

"The world, and everything that is in it, will ere long be recognized as

the common property of all, and undertaken and administered for the equal benefit of all."

That is to say, whether formulated by Bentham himself, or by Mill as his expositor, or by a communistic disciple, the assumption is that all men have equal rights to happiness. For this assumption no warrant is given, or can be given, other than alleged intuitive perception. It is an *a priori* cognition.

"But it is not a cognition properly so-called," will probably be asserted by those who wish to repudiate the communistic implication, at the same time that they wish to repudiate the *a priori* reasoning. "It is merely the product of perverted fancy. Happiness itself cannot be divided out either equally or unequally, and the greatest happiness is not to be obtained by equal division of the means to happiness, or the benefits, as they are above called. It is to be obtained rather by giving a larger share of means to those who are most capable of happiness." Raising no question about the practicability of such an adjustment, let us simply ask the warrant for this assertion. Is it an inductive warrant? Has anyone made a number of comparisons between societies in which the one method of apportioning happiness has been pursued, and societies in which the other has been pursued? Hardly so, considering that neither the one method nor the other has been pursued in any society. This alternative assumption has no more facts to stand upon than the assumption repudiated. If it does not claim for itself an *a priori* warrant, then it has no warrant.

See then the predicament. While reprobating assumptions said to be warranted only by direct intuition, this empirical system makes more such assumptions than the system to which it is opposed! One of them is implied in the assertion that happiness should be the end sought, and another of them is implied in either of the two assertions that men have equal rights to happiness or that they have

not equal rights to happiness. Mark, too, that no one of these intuitions is justified by so wide a *consensus* as the intuition rejected as untrustworthy. Sir Henry Maine remarks that—

“The happiness of mankind is, no doubt, sometimes assigned, both in the popular and in the legal literature of the Romans, as the proper object of remedial legislation, but it is very remarkable how few and faint are the testimonies to this principle compared with the tributes which are constantly offered to the overshadowing claims of the Law of Nature.” (*Ancient Law*, p. 79, 3rd edit.)

And it is scarcely needful to say that since Roman times, there has continued to be this contrast between the narrow recognition of happiness as an end, and the wide recognition of natural equity as an end.

§ 35. But now let it be remembered that this principle of natural equity, expressed in the last chapter as the freedom of each limited only by the like freedom of all, is not an exclusively *a priori* belief. Though, under one aspect, it is an immediate dictum of the human consciousness after it has been subject to the discipline of prolonged social life, it is, under another aspect, a belief deducible from the conditions to be fulfilled, firstly for the maintenance of life at large, and secondly for the maintenance of social life.

Examination of the facts has shown it to be a fundamental law, by conformity to which life has evolved from its lowest up to its highest forms, that each adult individual shall take the consequences of its own nature and actions: survival of the fittest being the result. And the necessary implication is an assertion of that full liberty to act which forms the positive element in the formula of justice; since, without full liberty to act, the relation between conduct and consequence cannot be maintained. Various examples have made clear the conclusion, manifest in theory, that among gregarious creatures this freedom of each to act, has to be restricted; since if it is

unrestricted there must arise such clashing of actions as prevents the gregariousness. And the fact that, relatively unintelligent though they are, inferior gregarious creatures inflict penalties for breaches of the needful restrictions, shows how regard for them has come to be unconsciously established as a condition to persistent social life.

These two laws, holding, the one of all creatures and the other of social creatures, and the display of which is clearer in proportion as the evolution is higher, find their last and fullest sphere of manifestation in human societies. We have recently seen that along with the growth of peaceful co-operation there has been an increasing conformity to this compound law under both its positive and negative aspects; and we have also seen that there has gone on simultaneously an increase of emotional regard for it and intellectual apprehension of it.

So that we have not only the reasons above given for concluding that this *a priori* belief has its origin in the experiences of the race, but we are enabled to affiliate it on the experiences of living creatures at large, and to perceive that it is but a conscious response to certain necessary relations in the order of nature.

No higher warrant can be imagined; and now, accepting the law of equal freedom as an ultimate ethical principle, having an authority transcending every other, we may proceed with our inquiry.

## CHAPTER VIII.

### ITS COROLLARIES.

§ 36. Men's activities are many in their kinds and the consequent social relations are complex. Hence, that the general formula of justice may serve for guidance, deductions must be drawn severally applicable to special classes of cases. The statement that the liberty of each is bounded only by the like liberties of all, remains a dead letter until it is shown what are the restraints which arise under the various sets of circumstances he is exposed to.

Whoever admits that each man must have a certain restricted freedom, asserts that it is *right* he should have this restricted freedom. If it be shown to follow, now in this case and now in that, that he is free to act up to a certain limit but not beyond it, then the implied admission is that it is *right* he should have the particular freedom so defined. And hence the several particular freedoms deducible may fitly be called, as they commonly are called, his *rights*.

§ 37. Words are sometimes profoundly discredited by misuse. The true ideas they connote become so intimately associated with false ideas, that they in large measure lose their characters. This is conspicuously the case with the word "rights."

In past times rivers of blood were shed in maintaining the "right" of this or that person to a throne. In the

days of the old Poor Law the claims of the pauper were habitually urged on the ground that he had a "right" to a maintenance out of the soil. Not many years since we were made familiar with the idea, then current among French working-men, that they had a "right" to labour; that is, a right to have labour provided for them. At the present time communists use the word "rights" in ways which entirely invert the meaning given to it by past usages. And so lax is the application of the word that those who pander to the public appetite for gossip about notable personages, defend themselves by saying that "the public has a 'right' to know."

The consequence has been that, in many of the cultivated, there has been produced a confirmed, and indeed contemptuous, denial of rights. There are no such things, say they, except such as are conferred by law. Following Bentham, they affirm that the State is the originator of rights, and that apart from it there are no rights.

But if lack of discrimination is shown in such misuse of words as includes under them more than should be included, lack of discrimination is also shown in not perceiving those true meanings which are disguised by the false meanings.

§ 38. As is implied above, rights, truly so called, are corollaries from the law of equal freedom, and what are falsely called rights are not deducible from it.

In treating of these corollaries, as we now proceed to do, we shall find that, in the first place, they one and all coincide with ordinary ethical conceptions, and that, in the second place, they one and all correspond with legal enactments. Further, it will become apparent that so far is it from being true that the warrant for what are properly called rights is derived from law, it is, conversely, true that law derives its warrant from them.



## CHAPTER IX.

### THE RIGHT TO PHYSICAL INTEGRITY.

§ 39. For using a title that is so apparently pedantic, my defence must be that no other adequately expresses everything to be included in the chapter. The physical integrity which has to be claimed for each, may at the one extreme be destroyed by violence, and at the other extreme interfered with by the nausea which a neighbouring nuisance causes.

It is a self-evident corollary from the law of equal freedom that, leaving other restraints out of consideration, each man's actions must be so restrained as not directly to inflict bodily injury, great or small, on any other. In the first place, actions carried beyond this limit imply the exercise on one side of greater freedom than is exercised on the other, unless it be by retaliation; and we have seen that, as rightly understood, the law does not countenance aggression and counter-aggression. In the second place, considered as the statement of a condition by conforming to which the greatest sum of happiness is to be obtained, the law forbids any act which inflicts physical pain or derangement.

§ 40. Only for form's sake is it needful to specify under this general head, the right to life and the consequent interdict on murder. This, which in civilized

communities is regarded as the blackest of crimes, may be considered as unconsciously, if not consciously, thus regarded because it is the greatest possible breach of the law of equal freedom ; for by murder another's power to act is not merely interfered with but destroyed. While, however, it is not needful to insist on this first deduction from the law of equal freedom, that life is sacred, it will be instructive to observe the successive steps towards recognition of its sacredness.

Noting as an extreme case that of the Fijians, among whom murder is, or was, thought honourable, we may pass to the many cases furnished by savage tribes who kill their old, diseased, and useless members. Various of the early European peoples, too, did the like. Grimm tells us that among the Wends "the children killed their aged parents, blood and other relatives, also those who no longer were fit for war or work, and then cooked and ate them, or buried them alive." "The Herulians, also, killed their aged and sick. . . Later traces of the custom of killing the aged and sick are found in North Germany."

Apart from this deliberate destruction of incapable members of the tribe, which very generally had the excuse that it was needful for preservation of the capable, there has habitually existed, in primitive social groups, no public recognition of murder as a crime. Of the Homeric Greeks Grote writes that the murderer had to dread only "the personal vengeance of the kinsmen and friends." These might compound for the offence by a stipulated payment. All that the chiefs did in such cases was to see that the bargains were fulfilled. In later times throughout Europe, the same ideas, sentiments, and practices prevailed. It was not so much the loss of his life by the man slain which constituted the evil, as the injury done to his family or clan : this was the wrong which had to be avenged or compounded for. Hence it was a matter of comparative indifference whether the actual

murderer was killed in return, or whether some guiltless member of the murderer's kindred. And this, too, was probably a part cause for the gradation in the compensations to be made for murders according to the rank of the murdered—compensations which, after being in earlier stages matters of private agreement, came presently to be established by law. And to how small an extent the conception of the sacredness of life had grown up, is seen in the fact that the slave had no *wergeld* or *bot*: his lord could slay him if he pleased, and if slain by some one else his value as a chattel only could be demanded.

An unobtrusive step towards recognition of murder as something more than a private offence, took place when part of the money paid in compensation went to the king: the idea being, in considerable measure, still the same; since destruction of a subject was destruction of a portion of the king's power over subjects, and did, in effect, diminish the strength of his society for fighting purposes. But the continuance of the different fines adjusted to different ranks, shows how little the intrinsic criminality of murder was recognized; and this is further shown by the distinction which benefit of clergy made. Up to the time of the Plantagenets a murderer "who knew how to read escaped from nearly all punishment"

Merely noting that a great step was made under the Commonwealth, when "benefit of clergy was to be abolished absolutely;" when, "by a separate Act, wager of battle was abolished;" and when "the same Act punished duelling with extraordinary severity" (legislation which recognized the intrinsic guilt of murder) we may come at once to modern times. No class-distinction can now be pleaded in mitigation, and no condonation under any form is possible.

The course of this progress presents three significant facts. Maintenance of life is in the earliest stages an

entirely private affair, as among brutes; and to the taking of it there is attached scarcely more idea of wrong than among brutes. With growing social aggregation and organization, the taking of life comes to be more and more regarded as a wrong done, first to the family or the clan, and then to the society; and it is punished rather as a sin against society than as a sin against the individual. But eventually, while there is retained the conception of its criminality as a breach of the law needful for social order, there becomes predominant the conception of its criminality as an immeasurable and irremediable wrong done to the murdered man. This consciousness of the intrinsic guilt of the act, implies a consciousness of the intrinsic claim of the individual to life: the right to life has acquired the leading place in thought.

§ 41. The connexion between such degree of bodily injury as causes death, and such degree of bodily injury as causes more or less incapacity for carrying on life, has all along been too obvious to escape recognition. Hence, with that tacit assertion of the right to physical integrity which is implied by the punishment of murder, there has gone such further tacit assertion of it as is implied by punishments for inflicting mutilations, wounds, &c. Naturally, too, there has been a certain parallelism between the successive stages in the two cases; beginning with that between life for life and "an eye for an eye."

When, after the early stage in which retaliation was entirely a private affair, there was reached the stage in which it came to be an affair concerning the family or clan, we see that as the clan avenged itself by taking from an offending clan a life to balance the life it had lost, so by insisting on a substituted, if not an actual, equivalent, it sought to avenge an injury which was not fatal. This is shown by the fact that after the system of money-damages had grown up, the price, not only for a life but for a limb,

was to be paid by the family or house of the wrong-doer to the family or house of the wronged. A further fact implies this same conception. With the Germanic tribes and the early English, along with compensations for homicide, varying according to rank, there went "as large a scheme of compensations for minor injuries," also according to rank. The implication in both cases is that the damage to the family or clan was dominant in thought, rather than the damage to the individual. The like held in ancient Russia.

As fast as the social life of smaller groups or clans, merged into the social life of larger groups or nations, the idea of injury to the nation began to replace that of injury to the clan; and at first part, and eventually the whole, of the fine or amercement payable by one who had committed an assault, went to the State; and this usage still survives. Though in cases of personal violence the current consciousness is now mainly occupied by sympathy with the injured man, and reprobation of the offender for having inflicted pain and accompanying mischief, yet the State appropriates the condonation-money, and leaves the sufferer to bear the evil as best he may.

But in modern days we see growth of a higher conception, in the awarding of compensations for injuries which have resulted from negligence. The claim of the citizen against a fellow-citizen, not only for bodily damage voluntarily inflicted on him but for bodily damage caused by careless actions or inactions, dates back some centuries at least. Much more extensive applications of the principle have of late years been made; such as those which render a railway-company liable for injuries caused by imperfection of its appliances or inattention of its officials, and private employers for those entailed on workmen by defective apparatus, by lack of safeguards, or by operations involving risk. These developments of law imply higher appreciations of the claims of the individual to physical integrity;

and the fact that the person or company responsible for the mischief done, is called upon to pay damages to the sufferer and not to the State, is one of the proofs that the claim of the individual to physical integrity, now occupies in the general consciousness a greater space than the thought of social detriment done by disregard of such claim.

Nor must we omit to note, in proof of the same thing, that what we may call the sacredness of the person, has in our days been further insisted on by laws which regard as assaults, not only such acts of violence as cause slight injuries, but such as are constituted by intentional pushes or other forcible interferences with another's body, or even by threatening uses of the hands without actual contact; and laws which also make a kiss, taken without consent, a punishable offence.

§ 42. One more trespass against physical integrity, not in early times thought of as such, but held to be such in our times, is that which consists in the communication of disease.

This is a kind of trespass which, though grave, and though partly recognized in law, occupies neither in law nor in the general conscience so distinct a place as it should do: probably because of the indefiniteness and uncertainty of the mischievous results. Here is a father who fetches home his boy suffering from an epidemic disease, regardless of the fact that the railway-carriage in which they travel may not improbably infect others; and here is a mother who asks the doctor whether her children have sufficiently recovered from scarlet fever to go to school, and proposes to send them notwithstanding the intimation that they may very possibly convey the disease to their school-fellows. Such acts are, indeed, punishable; but they so commonly pass without detection, and the evils likely to be inflicted are so faintly conceived, that they are scarcely

thought of as offences; though they really ought to be regarded as something like crimes—if not actual crimes, then potential crimes.

For let us remember that there is now recognized by law and by public conscience, the truth that not only actual physical mischiefs to others but also potential physical mischiefs to others, are flagitious. We have reached a stage in which the body of each person is so far regarded as a territory inviolable by any other person, that we rank as offences all acts which are likely to bring about violation of it.

§ 43. Thus it is undeniable that what we see to be the primary corollary from the formula of justice, has been, in the course of social evolution and the accompanying evolution of Man's mental nature, gradually establishing itself. Prolonged converse with the conditions under which alone social life can be harmoniously carried on, has slowly moulded sentiments, ideas, and laws, into conformity with this primary ethical truth deducible from those conditions.\*

That which it here concerns us specially to note, is that murder, manslaughter, mutilation, assault, and all trespasses against physical integrity down to the most trivial, have not become transgressions in virtue of laws forbidding them, nor in virtue of interdicts having a supposed supernatural origin; but they have become transgressions as being breaches of certain naturally-originated restraints.

It remains only to say that while, in a system of absolute

\* A barrister who has devoted much attention to the evolution of law, has obliged me by checking the statements which preceding and succeeding chapters contain respecting laws, past and present. To the above paragraph he has appended the following note:—

“The late Clitheroe abduction case which establishes that a man may not forcibly detain his own wife, is an interesting example of this doctrine. In this case the right of married women to physical liberty has only just been established by a Court of Appeal; and that against the opinion of two very able judges of 1st instance, who thought that the old law was otherwise.

The punishment by justices of School-board teachers, for the use of the rod on the boys, is another example of this growing feeling, which moulds the law while assuming only to administer it.”

ethics, the corollary here drawn from the formula of justice is unqualified, in a system of relative ethics it has to be qualified by the necessities of social self-preservation. Already we have seen that the primary law that each individual shall receive and suffer the benefits and evils of his own nature, following from conduct carried on with due regard to socially-imposed limits, must, where the group is endangered by external enemies, be modified by the secondary law, which requires that there shall be such sacrifice of individuals as is required to preserve, for the aggregate of individuals, the ability thus to act and to receive the results of actions. Hence, for purposes of defensive war, there is justified such contingent loss of physical integrity as effectual defence of the society requires: supposing, always, that effectual defence is possible. For it would seem to be an implication that where the invading force is overwhelming, such sacrifice of individuals is not justified.

We see here, indeed, as we shall see throughout all subsequent chapters, that the requirements of absolute ethics can be wholly conformed to only in a state of permanent peace; and that so long as the world continues to be occupied by peoples given to political burglary, the requirements of relative ethics only, can be fulfilled.



## CHAPTER X.

### THE RIGHTS TO FREE MOTION AND LOCOMOTION.

§ 44. As direct deductions from the formula of justice, the right of each man to the use of unshackled limbs, and the right to move from place to place without hindrance, are almost too obvious to need specifying. Indeed these rights, more perhaps than any others, are immediately recognized in thought as corollaries. Clearly, one who binds another's limbs, chains him to a post, or confines him in a dungeon, has used greater liberty of action than his captive; and no less clear is it that if, by threatened punishment or otherwise, he debars him from changing his locality, he commits a kindred breach of the law of equal freedom.

Further, it is manifest that if, in either of these ways, a man's liberty of action is destroyed or diminished, not by some one other man but by a number of other men acting jointly—if each member of a lower class thus has his powers of motion and locomotion partially cut off by the regulations which a higher class has established, each member of that higher class has transgressed the ultimate principle of equity in like manner if in a smaller degree.

§ 45. We have already seen that the instinct prompting flight, as well as the desire to escape when captured, show us in sub-human beings, as well as in human beings,

the presence of that impulse which finally emerges as a conscious claim to free motion and locomotion. But while this positive element in the sentiment corresponding to the right, deep-rooted as it is, early manifests itself, the negative element in it, corresponding to the imposed limits, has to await the discipline of sociality before it can reach any considerable development.

We have instances showing that where governmental control does not exist, or is very feeble, the tacit claim to unhindered movement is strongly pronounced; whether the nature be of a savage kind or of a gentle kind. Of the one class may be named the Abors, who are so self-asserting that they cannot live together, and the Nagas to whom the notion of restraint is so foreign that they ridicule the idea of a ruler. Of the other class I may instance the before-named Lepchas, who, mild as they are, fly to the woods and live on roots rather than submit to coercion; and the Jakuns, who are greatly valued as servants because of their virtues, but who disappear at once if authority is injudiciously exercised over them. Having in common a strong sense of personal liberty, these types of men differ in the respect that while, in the warlike type, this sense is egoistic only, it is, in the peaceful type, altruistic also—is joined with respect for the personal liberties of others.

Out of primitive unorganized groups, or groups of which the organization is very slight, the progress to large and organized groups is effected by war. While this implies little regard for life, it also implies little regard for liberty; and hence, in the course of the process by which nations are formed, recognition of the claim to liberty, as well as of that to life, is subordinated: the sentiment is continually repressed and the idea is rendered vague. Only after social consolidation has made great progress, and social organization has become in large measure industrial—only when militancy has ceased to be constant and the militant

type of structure has relaxed, do the sentiment and the idea become more marked.

Here we have to glance at some of the steps through which the claim to freedom of motion and locomotion is gradually established, ethically and legally.

§ 46. It has been remarked with truth that the rise of slavery was practically a limitation of cannibalism, and in so far a progress. When the prisoner of war was allowed to live and work instead of being cooked and eaten, the fundamental principle of equity was no longer absolutely negatived in his person; for the continuance of his life, even under the imposed conditions, made possible some maintenance of the relation between conduct and consequence. Where the enslaved prisoners and their descendants, fed and sheltered to the extent required for making use of them as working cattle, are also liable at any time to be made into food, as until lately among the Fijians, this mitigation of cannibalism is relatively small; but where, as among many of the uncivilized, the slave is treated in large measure as a member of the family, the restraints on his freedom are practically not much greater than those to which the children are subject.

To specify the different forms and qualifications of bondage which have existed among various peoples at different times and under changing social conditions, would be needless for our purpose here, even were it practicable. Such facts only must be named as indicate how the conception of individual liberty grew up, alike in law and in ethics. We may note that among the Hebrews, while persons of foreign blood might be bought and, with their children, inherited as possessions, those of Hebrew blood who sold themselves, either to men of their own race or to strangers sojourning among them, were subject to a slavery qualified alike in respect of length and rigour: the reason given being that, as servants of God, they could not be permanently

alienated. But there was neither recognition of any wrong inflicted by enslavement, nor of any correlative right to freedom. This lack of the sentiments and ideas which, in modern times, have become so pronounced, continued to the time when Christianity arose, and was not changed by Christianity. Neither Christ nor his apostles denounced slavery; and when, in reference to freedom, there was given the advice to "use it rather" than slavery, there was manifestly implied no thought of any inherent claim of each individual to unhindered exercise of free motion and locomotion. So was it among the Greeks; as, indeed, it has been among most peoples during early stages. In Homeric times, captives taken in war were enslaved and might be sold or ransomed; and throughout Greek civilization, accompanying warfare that was practically chronic, slavery was assumed to be a normal part of the social order. Lapse into bondage by capture, debt, or otherwise, was regarded as a misfortune; and no reprobation attached to the slave-owner. That is to say, the conception of freedom as an inalienable right of each man, had little or no place in either ethics or law. Inevitably, indeed, it was suppressed in relation to slaves, literally so-called, when even those who were nominally free were in reality slaves of the State—when each citizen belonged not to himself but to his city. And it is noteworthy that in the most warlike Greek state, Sparta, not only was the condition of the helot more abject than elsewhere, but the Spartan master himself was deprived in a greater degree than elsewhere of the power to order his own movements as he pleased.

Indeed we may recognize, generally, the fact that in states which have grown considerably in size and structure, it has naturally happened that since they have thus grown by external aggression and conquest, implying, as it always does, internal coercion, individuality has been so greatly repressed as to leave little trace in law and usage.

§ 47. To illustrate the growth in morals and legisla-

tion of that conception of human freedom which has now become established among the leading civilized races, it will suffice if we glance at some of the chief steps traceable in our own history.

Militant as were the successive swarms of invaders who, now subjugating and now expelling the previous possessors of the soil, peopled the country in old English days, it of course happened that slaves existed among them—a class of the unfree, originally captives, the size of which was from time to time augmented by the addition of debtors and criminals. Along with the growth of population and accompanying advance of political organization, those who, under the original Mark-system, had formed a class of free men, gradually lost much of their liberty: occasionally by conflicts within groups, in the course of which some members gained predominance, but mostly in the course of external conflicts, leading to subjugations and establishments of lordships. Peasants became subject to thegns and thegns to higher nobles; so that “by Alfred’s day it was assumed that no man could exist without a lord:” implying deprivation of freedom not only in members of the lowest rank (the slaves who were bought and sold) but in members of all higher ranks. Amid the changes which followed the Conquest, this limitation of liberty implied by sworn fealty continued; or rather, indeed, was increased, save in the partial abolition of trade in slaves. With the growth of towns during the 11th century, the accompanying development of industrial institutions, the implied replacing of relations of *status* by relations of contract, and the development of a “new moral sense of man’s right to equal justice,” came a “transition from pure serfage to an imperfect freedom.” A century later the Great Charter put restraints on arbitrary rule, and the consequent losses of freedom by citizens. The growing influence of the trading classes was shown by the concession of liberty of journeying to foreign merchants. And then when, after another hundred years, the attachment of the serf to the soil, gradually

weakened, had been broken, the fully free labourer acquired the right of unhindered locomotion. Though he partially lost this right when the Black Death caused so large a decrease of population, and consequent great rise in wages, that there was prompted a statute fixing the price of labour, and tying the labourer to his parish; yet these restraints, by the violent resistance they caused, led to a violent assertion of equality, not only in respect to right of locomotion but in respect to other things. But how little the claim to freedom was then recognized by the ruling classes, was shown when, after the subjugation of the revolting peasants, the king suggested enfranchisement; and when the landowners, asserting that their serfs were their goods, said that consent to emancipation "we have never given and never will give, were we all to die in one day." As increase of industrial activity and organization had produced increase of liberty, so, conversely, the twenty years of militant activity known as the Wars of the Roses, destroyed much of the liberty which had been obtained: not, however, the detachment of the peasant from the soil, and consequent ability to wander about, which, in the disturbed social state left by the collapse of feudalism, entailed an industrial disorganization that was remedied by again putting the labouring class under partial coercion, and partially attaching them to their localities, without otherwise restraining their movements. The freedom thus obtained had, however, still to be safeguarded; and the provisions against arbitrary imprisonment, dating from the Great Charter but often broken through, were strengthened, towards the end of the 17th century, by the Habeas Corpus Act. Save slight interferences caused by temporary panics, personal liberty in England thereafter continued intact; while such minor restraints on freedom of movement as were involved in the laws forbidding artizans to travel in search of work, were formally abolished in 1824.

And now let us not omit to note that, along with the

slow legal establishment of personal liberty there has gone a growth of the responsive sentiment ; and that with the egoistic assertion of liberty has been eventually joined the altruistic assertion of it. Those changes which, in the course of many centuries, have advanced social arrangements from a condition of complete slavery of the lowest, and qualified slavery of those above them, to a state of absolute freedom for all, have, towards their close, produced both sentiment and law asserting this freedom, not in English citizens only but in aliens under English rule—beginning with the emancipation of slaves who set foot on English soil, and ending with the emancipation of all who inhabited English colonies : since which time abolition of slavery elsewhere has been a constant aim.

§ 48. Unless by those who think that civilization is a backward movement, it must, then, be admitted that induction justifies this deduction from the fundamental principle of equity. Those who think that ancient societies were of higher types than our own, and human welfare better achieved by them—those who think that feudal organization with its grades of vassalage superposed on villeinage, produced a greater total of happiness than we experience now—those who, with Mr. Carlyle, yearn for a time like that of Abbot Sampson, and applaud the obedience of the Russians to their Czar ; may consistently deny that growth of the sentiment of liberty, and establishment of individual freedom by law, afford any support for the abstract inference drawn in this chapter. But those who think that our days are better than those in which nobles lived in castles and wore shirts of mail—those who think that *oubliettes* and torture-chambers were accompaniments of a social state less desirable than that in which princes as well as paupers are subject to the administration of justice—those who think that the *régime* which brought about peasant revolts was inferior to that which is characterized

by multitudinous societies for furthering popular welfare, must admit that the generalization drawn from human experiences at large, is at one with the corollary above drawn from the formula of justice.

But this *dictum* of absolute ethics has to be qualified by the requirements of relative ethics. From the principle laid down at the outset, that the preservation of the species, or that variety of it constituting a society, is an end which must take precedence of the preservation of the individual, it follows that the right to individual liberty, like the right to individual life, must be asserted subject to qualifications entailed by the measures needful for national safety. Such trespass on liberty as is required to preserve liberty, has a quasi-ethical warrant. Subject only to the condition that all capable members of the community shall be equally liable to it, that restraint on the rights of free motion and locomotion necessitated by military organization and discipline, is legitimate; provided always that the end in view is defensive war and not offensive war.



## CHAPTER XI.

### THE RIGHTS TO THE USES OF NATURAL MEDIA.

§ 49. A man may be entirely uninjured in body by the actions of fellow-men, and he may be entirely unimpeded in his movements by them, and he may yet be prevented from carrying on the activities needful for maintenance of life, by traversing his relations to the physical environment on which his life depends. It is, indeed, alleged that certain of these natural agencies cannot be removed from the state of common possession. Thus we read:—

“Some things are by nature itself incapable of appropriation, so that they cannot be brought under the power of anyone. These got the name of *res communes* by the Roman law; and were defined, things the property of which belongs to no person, but the use to all. Thus, the light, the air, running water, &c. are so adapted to the common use of mankind, that no individual can acquire a property in them, or deprive others of their use.” (*An Institute of the Law of Scotland* by John Erskine, (ed. Macallan) i, 196.) But though light and air cannot be monopolized, the distribution of them may be interfered with by one man to the partial deprivation of another man—may be so interfered with as to inflict serious injury upon him.

No interference of this kind is possible without a breach of the law of equal freedom. The habitual interception of light by one person in such way that another person is habitually deprived of an equal share, implies disregard of the principle that the liberty of each is limited by the like

liberties of all; and the like is true if free access to air is prevented.

Under the same general head there must, however, by an unusual extension of meaning, be here included something which admits of appropriation—the surface of the Earth. This, as forming part of the physical environment, seems necessarily to be included among the media of which the use may be claimed under the law of equal freedom. The Earth's surface cannot be denied to any one absolutely, without rendering life-sustaining activities impracticable. In the absence of standing-ground he can do nothing; and hence it appears to be a corollary from the law of equal freedom, interpreted with strictness, that the Earth's surface may not be appropriated absolutely by individuals, but may be occupied by them only in such manner as recognizes ultimate ownership by other men; that is—by society at large.

Concerning the ethical and legal recognitions of these claims to the uses of media, not very much has to be said: only the last demands much attention. We will look at each of them in succession.

§ 50. In the earliest stages, while yet urban life had not commenced, no serious obstruction of one man's light by another man could well take place. In encampments of savages and in the villages of agricultural tribes, no one was led, in pursuit of his ends, to overshadow the habitation of his neighbour. Indeed, the structures and relative positions of habitations made such aggressions almost impracticable.

In later times, when towns had grown up, it was unlikely that much respect would forthwith be paid by men to the claims of their neighbours in respect of light. During stages of social evolution in which the rights to life and liberty were little regarded, such comparatively trivial trespasses as were committed by those who built houses

close in front of others' houses, were not likely to attract much notice, considered either as moral transgressions or legal wrongs. The narrow, dark streets of ancient continental cities, in common with the courts and alleys characterizing the older parts of our own towns, imply that in the days when they were built the shutting out by one man of another man's share of sun and sky, was not thought an offence. And, indeed, it may reasonably be held that recognition of such an offence was in those days impracticable; since, in walled towns, the crowding of houses became a necessity.

In modern times, however, there has arisen the perception that the natural distribution of light may not be interfered with. Though the law which forbids the building of walls, houses, or other edifices of certain heights, within prescribed distances from existing houses, does not absolutely negative the intercepting of light; yet it negatives the intercepting of it to serious degrees, and seeks to compromise the claims of adjacent owners as fairly as seems practicable.

That is to say, this corollary from the law of equal freedom, if it has not come to be overtly asserted, has come to be tacitly recognized.

§ 51. To some extent interference with the supply of light involves interference with the supply of air; and, by interdicting the one, some interdict is, by implication, placed on the other. But the claim to use of the air, though it has been recognized by English law in the case of windmills, is less definitely established: probably because only small evils have been caused by obstructions.

There has, however, risen into definite recognition the claim to unpolluted air. Though acts of one man which may diminish the supply of air to another man, have not come to be distinctly classed as wrong; yet acts which vitiate the quality of his air are in modern times regarded as offences—offences for which there are in some cases

moral reprobations only, and in other cases legal penalties. In some measure all are severally obliged, by their own respiration, to vitiate the air respired by others, where they are in proximity. It needs but to walk a little distance behind one who is smoking, to perceive how widely diffused are the exhalations from each person's lungs; and to what an extent, therefore, those who are adjacent, especially indoors, are compelled to breathe the air that has already been taken in and sent out time after time. But since this vitiation of air is mutual, it cannot constitute aggression. Aggression occurs only when vitiation by one, or some, has to be borne by others who do not take like shares in the vitiation; as often happens in railway-carriages, where men who think themselves gentlemen smoke in other places than those provided for smokers: perhaps getting from fellow-passengers a nominal, though not a real, consent, and careless of the permanent nuisance entailed on those who afterwards travel in compartments reeking with stale tobacco-smoke. Beyond the recognition of this by right-thinking persons as morally improper, it is forbidden as improper by railway-regulations; and, in virtue of bye-laws, may bring punishment by fine.

Passing from instances of this kind to instances of a graver kind, we have to note the interdicts against various nuisances—stenches resulting from certain businesses carried on near at hand, injurious fumes such as those from chemical works, and smoke proceeding from large chimneys. Legislation which forbids the acts causing such nuisances, implies the right of each citizen to unpolluted air.

Under this same head we may conveniently include another kind of trespass to which the surrounding medium is instrumental. I refer to the production of sounds of a disturbing kind. There are small and large trespasses of this class. For one who, at a table d'hôte, speaks so loudly as to interfere with the conversation of others, and for those who, during the performance at a theatre or concert,

persist in distracting the attention of auditors around by talking, there is reprobation, if nothing more: their acts are condemned as contrary to good manners, that is, good morals, for the one is a part of the other. And then when inflictions of this kind are public, or continuous, or both—as in the case of street-music and especially bad street-music, or as in the case of loud noises proceeding from factories, or as in the case of church-bells rung at early hours, the aggression has come to be legally recognized as such and forbidden under penalty: not as yet sufficiently recognized, however, as is shown in the case of railway-whistles at central stations, which are allowed superfluously to disturb tens of thousands of people all through the night, and often to do serious injury to invalids.

Thus in respect of the uses of the atmosphere, the liberty of each limited only by the like liberties of all, though not overtly asserted, has come to be tacitly asserted; in large measure ethically, and in a considerable degree legally.

§ 52. The state of things brought about by civilization does not hinder ready acceptance of the corollaries thus far drawn; but rather clears the way for acceptance of them. Though in the days when cannibalism was common and victims were frequently sacrificed to the gods, assertion of the right to life might have been received with demur, yet the ideas and practices of those days have left no such results as stand in the way of unbiassed judgments. Though during times when slavery and serfdom were deeply organized in the social fabric, an assertion of the right to liberty would have roused violent opposition, yet at the present time, among ourselves at least, there exists no idea, sentiment, or usage, at variance with the conclusion that each man is free to use his limbs and move about where he pleases. And similarly with respect to the environment. Such small interferences with others' supplies of light and air as have been bequeathed in the structures of old towns

and such others as smoking fires entail, do not appreciably hinder acceptance of the proposition that men have equal claims to uses of the media in which all are immersed. But the proposition that men have equal claims to the use of that remaining portion of the environment—hardly to be called a medium—on which all stand and by the products of which all live, is antagonized by ideas and arrangements descending to us from the past. These ideas and arrangements arose when considerations of equity did not affect land-tenure any more than they affected the tenure of men as slaves or serfs; and they now make acceptance of the proposition difficult. If, while possessing those ethical sentiments which social discipline has now produced, men stood in possession of a territory not yet individually portioned out, they would no more hesitate to assert equality of their claims to the land than they would hesitate to assert equality of their claims to light and air. But now that long-standing appropriation, continued culture, as well as sales and purchases, have complicated matters, the *dictum* of absolute ethics, incongruous with the state of things produced, is apt to be denied altogether. Before asking how, under these circumstances, we must decide, let us glance at some past phases of land-tenure.

Partly because in early stages of agriculture, land, soon exhausted, soon ceases to be worth occupying, it has been the custom with little-civilized and semi-civilized peoples, for individuals to abandon after a time the tracts they have cleared, and to clear others. Causes aside, however, the fact is that in early stages private ownership of land is unknown: only the usufruct belongs to the cultivator, while the land itself is tacitly regarded as the property of the tribe. It is thus now with the Sumatrans and others, and it was thus with our own ancestors: the members of the Mark, while they severally owned the products of the areas they respectively cultivated, did not own the areas themselves. Though it may be said that at first

they were members of the same family, *gens*, or clan, and that the ownership of each tract was private ownership in so far as the tract belonged to a cluster of relations; yet since the same kind of tenure continued after the population of the Mark had come to include men who were unrelated to the rest, ownership of the tract by the community and not by individuals became an established arrangement. This primitive condition will be clearly understood after contemplating the case of the Russians, among whom it has but partially passed away.

"The village lands were held in common by all the members of the association [*mir*]; the individual only possessed his harvest, and the *dvor* or enclosure immediately surrounding his house. This primitive condition of property, existing in Russia up to the present day, was once common to all European peoples."—(*The History of Russia*, A. Rambaud, trans. by Lang, vol. i. p. 45).

With this let me join a number of extracts from Wallace's *Russia*, telling us of the original state of things and of the subsequent states. After noting the fact that while the Don Cossacks were purely nomadic—"agriculture was prohibited on pain of death," apparently because it interfered with hunting and cattle-breeding, he says—

"Each Cossack who wished to raise a crop ploughed and sowed wherever he thought fit, and retained as long as he chose the land thus appropriated; and when the soil began to show signs of exhaustion, he abandoned his plot and ploughed elsewhere. As the number of agriculturists increased, quarrels frequently arose. Still worse evils appeared when markets were created in the vicinity. In some *stamtzas* [Cossack villages] the richer families appropriated enormous quantities of the common land by using several teams of oxen, or by hiring peasants in the nearest villages to come and plough for them; and instead of abandoning the land after raising two or three crops they retained possession of it. Thus the whole of the arable land, or at least the best parts of it, became actually, if not legally, the private property of a few families."—(*Ib.* ii. 86.)

Then he explains that as a consequence of something like a revolution—

"In accordance with their [the landless members of the community's] demands the appropriated land was confiscated by the Commune and the system of periodical distributions . . . was introduced. By this system each adult male possesses a share of the land."—(*Ib.* ii. 87.)

On the Steppes "a plot of land is commonly cultivated for only three or

four years in succession. It is then abandoned for at least double that period, and the cultivators remove to some other portion of the communal territory . . . Under such circumstances the principle of private property in the land is not likely to strike root; each family insists on possessing a certain *quantity* rather than a certain *plot* of land, and contents itself with a right of usufruct, whilst the right of property remains in the hands of the Commune."—(*Ib.* ii. 91.)

But in the central and more advanced districts this early practice has become modified, though without destroying the essential character of the tenure.

"According to this system [the three-field system] the cultivators do not migrate periodically from one part of the communal territory to another, but till always the same fields, and are obliged to manure the plots which they occupy. . . . Though the three-field system has been in use for many generations in the central provinces, the communal principle, with its periodical re-allotment of the land, still remains intact."—(*Ib.* ii. 92.)

Such facts, and numerous other such facts, put beyond question the conclusion that before the progress of social organization changed the relations of individuals to the soil, that relation was one of joint ownership and not one of individual ownership.

How was this relation changed? How only could it be changed? Certainly not by unforced consent. It cannot be supposed that all, or some, of the members of the community willingly surrendered their respective claims. Crime now and again caused loss of an individual's share in the joint ownership; but this must have left the relations of the rest to the soil unchanged. A kindred result might have been entailed by debt, were it not that debt implies a creditor; and while it is scarcely supposable that the creditor could be the community as a whole, indebtedness to any individual of it would not empower the debtor to transfer in payment something of which he was not individually possessed, and which could not be individually received. Probably elsewhere there came into play the cause described as having operated in Russia, where some, cultivating larger areas than others, accumulated wealth and consequent power, and extra possessions; but, as is implied by the fact that in Russia this led to a revolution and



re-institution of the original state, the process was evidently there, and probably elsewhere, regarded as aggressive. Obviously the chief cause must have been the exercise of direct or indirect force: sometimes internal but chiefly external. Disputes and fights within the community, leading to predominance (achieved in some cases by possession of fortified houses) prepared the way for partial usurpations. When, as among the Suanetians, we have a still-extant case in which every family in a village has its tower of defence, we may well understand how the intestine feuds in early communities commonly brought about individual supremacies, and how these ended in the establishment of special claims upon the land subordinating the general claims.

But conquest from without has everywhere been chiefly instrumental in superseding communal proprietorship by individual proprietorship. It is not to be supposed that in times when captive men were made slaves and women appropriated as spoils of war, much respect was paid to pre-existing ownership of the soil. The old English buccaneers who, in their descents on the coast, slew priests at the altars, set fire to churches, and massacred the people who had taken refuge in them, would have been very incomprehensible beings had they recognized the land-ownership of such as survived. When the pirate Danes, who in later days ascended the rivers, had burnt the homesteads they came upon, slaughtered the men, violated the women, tossed children on pikes or sold them in the market place, they must have undergone a miraculous transformation had they thereafter inquired to whom the Marks belonged, and admitted the titles of their victims to them. And similarly when, two centuries later, after constant internal wars had already produced military rulers maintaining quasi-feudal claims over occupiers of lands, there came the invading Normans, the right of conquest once more overrode such kinds of possession as had grown

up, and still further merged communal proprietorship in that kind of individual proprietorship which characterized feudalism. Victory, which gives unqualified power over the defeated and their belongings, is followed, according to the nature of the race, by the assertion of universal ownership, more or less qualified according to the dictates of policy. While in some cases, as in Dahomey, there results absolute monopoly by the king, not only of the land but of everything else, there results in other cases, as there resulted in England, supreme ownership by the king with recognized sub-ownerships and sub-sub-ownerships of nobles and their vassals holding the land one under another, on condition of military service: supreme ownership being, by implication, vested in the crown.

Both the original state and the subsequent states have left their traces in existing land-laws. There are many local rights which date from a time when "private property in land, as we now understand it, was a struggling novelty."\*

"The people who exercise rights of common exercise them by a title which, if we could only trace it all the way back, is far more ancient than the lord's. Their rights are those which belonged to the members of the village community long before manors and lords of the manor were heard of."†

And anyone who observes what small tenderness for the rights of commoners is shown in the obtainment of Inclosure-Acts, even in our own day, will be credulous indeed if he thinks that in ruder times the lapse of communal rights into private rights was equitably effected. The private ownership, however, was habitually incomplete; since it was subject to the claims of the over-lord, and through him, again, to those of the over-over-lord: the implication being that the ownership was subordinate to that of the head of the community.

"No absolute ownership of land is recognized by our law-books except in the Crown. All lands are supposed to be held, immediately, or mediately,

\* *The Land Laws*, by Sir Fredk. Pollock, Bart., p. 2.

† *Ibid.*, p. 6.

of the Crown, though no rent or services may be payable, and no grant from the Crown on record.”\*

And that this conception of land-ownership survives, alike in theory and in practice, to the present time, is illustrated by the fact that year by year State-authority is given for appropriating land for public purposes, after making due compensation to existing holders. Though it may be replied that this claim of the State to supreme land-ownership is but a part of its claim to supreme ownership in general, since it assumes the right to take anything on giving compensation ; yet the first is an habitually-enforced claim, while the other is but a nominal claim not enforced ; as we see in the purchase of pictures for the nation, to effect which the State enters into competition with private buyers, and may or may not succeed.

It remains only to point out that the political changes which have slowly replaced the supreme power of the monarch by the supreme power of the people, have, by implication, replaced the monarch's supreme ownership of the land by the people's supreme ownership of the land. If the representative body has practically inherited the governmental powers which in past times vested in the king, it has at the same time inherited that ultimate proprietorship of the soil which in past times vested in him. And since the representative body is but the agent of the community, this ultimate proprietorship now vests in the community. Nor is this denied by land-owners themselves. The report issued in December, 1889, by the council of “The Liberty and Property Defence League,” on which sit several Peers and two judges, yields proof. After saying that the essential principle of their organization, “based upon recorded experience,” is a distrust of “officialism, imperial or municipal,” the council go on to say that—

“This principle applied to the case of land clearly points to individual

\* *The Land Laws*, by Sir Fredk. Pollock, Bart., p. 12.

ownership, qualified by State-suzerainty. . . . The land can of course be 'resumed' on payment of full compensation, and managed by the 'people' if they so will it."

And the badness of the required system of administration is the only reason urged for maintaining the existing system of land-holding: the supreme ownership of the community being avowedly recognized. So that whereas, in early stages, along with the freedom of each man, there went joint ownership of the soil by the body of men; and whereas, during the long periods of that militant activity by which small communities were consolidated into great ones, there simultaneously resulted loss of individual freedom and loss of participation in land-ownership; there has, with the decline of militancy and the growth of industrialism, been a re-acquirement of individual freedom and a re-acquirement of such participation in land-ownership as is implied by a share in appointing the body by which the land is now held. And the implication is that the members of the community, habitually exercising as they do, through their representatives, the power of alienating and using as they think well, any portion of the land, may equitably appropriate and use, if they think fit, all portions of the land. But since equity and daily custom alike imply that existing holders of particular portions of land, may not be dispossessed without giving them in return its fairly-estimated value, it is also implied that the wholesale resumption of the land by the community can be justly effected only by wholesale purchase of it. Were the direct exercise of ownership to be resumed by the community without purchase, the community would take, along with something which is its own, an immensely greater amount of something which is not its own. Even if we ignore those multitudinous complications which, in the course of century after century, have inextricably entangled men's claims, theoretically considered—even if we reduce the case to its simplest theoretical form; we must admit that all which can be claimed for the community

is the surface of the country in its original unsubdued state. To all that value given to it by clearing, breaking-up, prolonged culture, fencing, draining, making roads, farm buildings, &c., constituting nearly all its value, the community has no claim. This value has been given either by personal labour, or by labour paid for, or by ancestral labour; or else the value given to it in such ways has been purchased by legitimately earned money. All this value artificially given vests in existing owners, and cannot without a gigantic robbery be taken from them. If, during the many transactions which have brought about existing land-ownership, there have been much violence and much fraud, these have been small compared with the violence and the fraud which the community would be guilty of did it take possession, without paying for it, of that artificial value which the labour of nearly two thousand years has given to the land.

§ 53. Reverting to the general topic of the chapter—the rights to the uses of natural media—it chiefly concerns us here to note the way in which these rights have gradually acquired legislative sanctions as societies have advanced to higher types.

At the beginning of the chapter we saw that in modern times there have arisen legal assertions of men's equal rights to the uses of light and air: no forms of social organization or class-interests having appreciably hindered recognition of these corollaries from the law of equal freedom. And we have just seen that by implication, if not in any overt or conscious way, there has in our days been recognized the equal rights of all electors to supreme ownership of the inhabited area—rights which, though latent, are asserted by every Act of Parliament which alienates land. Though this right to the use of the Earth, possessed by each citizen, is traversed by established arrangements to so great an extent as to be practically

suspended; yet its existence as an equitable claim cannot be denied without affirming that expropriation by State-decree is inequitable. The right of an existing holder of land can be equitably superseded, only if there exists a prior right of the community at large; and this prior right of the community at large consists of the sum of the individual rights of its members.

NOTE. Various considerations touching this vexed question of land-ownership, which would occupy too much space if included here, I have included in Appendix B.

## CHAPTER XII.

### THE RIGHT OF PROPERTY.

§ 54. Since all material objects capable of being owned, are in one way or other obtained from the Earth, it results that the right of property is originally dependent on the right to the use of the Earth. While there were yet no artificial products, and natural products were therefore the only things which could be appropriated, this was an obviously necessary connexion. And though, in our developed form of society, there are multitudinous possessions, ranging from houses, furniture, clothes, works of art, to bank-notes, railway-shares, mortgages, government bonds, &c., the origins of which have no manifest relation to use of the Earth; yet it needs but to remember that they either are, or represent, products of labour, that labour is made possible by food, and that food is obtained from the soil, to see that the connexion, though remote and entangled, still continues. Whence it follows that a complete ethical justification for the right of property, is involved in the same difficulties as the ethical justification for the right to the use of the Earth.

The justification attempted by Locke is unsatisfactory. Saying that "though the Earth and all inferior creatures be common to all men, yet every man has a property in his own person," and inferring that "the labour of his body, and the work of his hands," are therefore his, he continues:—"Whatever then he removes out of the state

that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property." But one might reply that as, according to the premises, "the Earth and all inferior creatures" are "common to all men," the consent of all men must be obtained before any article can be equitably "removed from the common state nature hath placed it in." The question at issue is, whether by labour expended in removing it, a man has made his right to the thing greater than the pre-existing rights of *all* other men put together. The difficulty thus arising may be avoided however. There are three ways in which, under savage, semi-civilized, and civilized conditions, men's several rights of property may be established with due regard to the equal rights of all other men.

Among the occupiers of a tract who gather or catch the wild products around, it may be tacitly, if not overtly, agreed that having equal opportunities of utilizing such products, appropriation achieved by any one shall be passively assented to by the others. This is the general understanding acted upon by the members of hunting tribes. It is instructive to observe, however, that among some of them there is practically, if not theoretically, asserted the qualification indicated above; for usage countenances a partial claim by other tribes-men to game which one of the tribe has killed: apparently implying the belief that this prey was in part theirs before it was killed. Schoolcraft tells us concerning the Comanches that—

"They recognize no distinct rights of *meum* and *tuum*, except to personal property; holding the territory they occupy, and the game that depastures upon it, as common to all the tribe: the latter is appropriated only by capture. . . . He who kills the game retains the skin, and the meat is divided according to the necessity of the party, always without contention, as each individual shares his food with every member of the tribe."

Kindred usages and ideas are found among the Chippeaways. Schoolcraft writes:—

"In the former instance [when game is taken in inclosures by a hunting



party], the game is divided among those who have been engaged in pursuit of it. In the latter [when taken in private traps] it is considered as private property: nevertheless, any unsuccessful hunter passing by, may take a deer so caught, leaving the head, skin, and saddle for the owner."

The quasi-equitable nature of these several arrangements, vaguely, if not definitely, regarded as right, will be fully appreciated by any one who is joint tenant of a fishing, or is privileged along with other guests to utilize one, and who is conscious of annoyance if a co-tenant, or companion guest, makes undue use of it: a feeling which would be still stronger were an unfair share of food appropriated as well as an unfair share of sport.

Passing from the hunting stage to the semi-settled stage, we meet with usages having the same general implications. The occupied area, instead of being equally available by all for gathering and catching the food it spontaneously yields, becomes equally available by all for growing food; and the products of labour in the last case, like the achievements of labour in the first, are owned by those who expend the labour. It is perceived that the assent of the clan to ownership of food grown on an appropriated portion by any one, is implied in the assumptions of kindred ownerships, similarly established, by all others. As shown by the Russian tenures described in the last chapter, the indefinite understanding thus arising, passes eventually into a definite understanding: there is a partition of the land into equal portions; a farming of each portion by its appointed owner; and a recognition of the produce as his property. A kindred understanding existed among the Irish in the time of Henry II. and later. "The land belonging to the tribe was shared among its members, but re-divided among them at certain intervals of years": the implication being that, by general agreement, whatever the individual obtained from the land by his labour under these conditions was exclusively his. In this case then, as in the first, the right of property arises in conformity with the law of equal freedom.

Though we cannot say that ownership of property, thus arising, results from actual contract between each member of the community and the community as a whole, yet there is something like a potential contract; and such potential contract might grow into an actual contract if one part of the community devoted itself to other occupations, while the rest continued to farm: a share of the produce being in such case payable by agreement to those who had ceased to be farmers, for the use of their shares of the land. We have no evidence that such a relation between occupiers and the community, with consequent authorized rights of property in the produce which remained after payment of a portion equivalent to rent, has ever arisen; for, as we have seen, the original ownership by the community has habitually been usurped by internal or external aggressors, and the rent, taking the shape, if not of produce, then of labour or military service, has been habitually paid to the usurper: a state of things under which equitable rights of property, in common with equitable rights of all kinds, are submerged. But out of such usurpations there has grown up, as we have seen, ownership by the State and tenancy under it; from which there may again arise a theoretically equitable right of property. In China, where "the land is all held directly from the Crown" "on payment of an annual tax," with "composition for personal service to the government," the legitimate proprietorship of such produce as remains after payment of rent to the community, can be asserted only on the assumption that the emperor stands for the community. In India, where the government is supreme land-owner, and where, until the zemindar system was established, it was the direct receiver of rents, the derivation of a right of property by contract between the individual and the community can be still less asserted without a strained interpretation. Nor at home, where the theory that each land-owner is a tenant of the crown is little more than a theory, is there any better fulfilment of the

ethical requirement. Only here and there, where State-ownership is not potential but actual, and ordinary rents are paid by occupiers to the crown (which has now in such cases come to be identified with the community), has there been consequently established that kind of use of the Earth which gives a theoretically valid basis to the right of private property.

But admitting that the establishment of an ethically-complete right of property is beset with difficulties like those which beset the establishment of an ethically-complete right to the use of the Earth, we are nevertheless shown by a survey of the facts which existing primitive societies present, and the facts traceable in the early histories of civilized societies, that the right of property is originally deducible from the law of equal freedom; and that it ceases to be so deducible only when the other corollaries from the law of equal freedom have been disregarded.

§ 55. This deduction, early recognized in custom and afterwards formulated by legislators, has come to be elaborated and enforced more and more fully as society has developed.

That the right of property was originally conceived as a claim established by labour which was carried on without aggressing on others, is seen in the fact that among the rudest peoples, who have developed the conception to the smallest extent, there is property in weapons, implements, dress and decorations—things in which the value given by labour bears a specially large ratio to the value of the raw material. When with such articles we join huts, which, however, being commonly made by the help of fellow men who receive reciprocal aid, are thus less distinctly products of an individual's labour, we have named about all the things in which, at first, the worth given by effort is great in comparison with the inherent worth; for the inherent worth of the wild food gathered or caught is more obvious

than the worth of the effort spent in obtaining it. And this is doubtless the reason why, in the rudest societies, the right of property is more definite in respect of personal belongings than in respect of other things.

That recognition of the right of property is originally recognition of the relation between effort and benefit, is, at a later stage, shown in the *regime* of the patriarchal group and the house-community; for though, as Sir Henry Maine points out, the head of the group was at first nominally owner of all its possessions, yet, in fact, he held its possessions in trust, and each of its members, while he did his share in the carrying on of the joint labours, had his share in the proceeds. Though this arrangement—quasi-socialistic within the group, but competitive outside the group—does not give definite expression to the right of individual property, it tacitly asserts that labour must bring to the labourer something like its equivalent in produce. And the tacit assertion passes into an overt assertion in those cases where members of the group acquire property in virtue of labour expended by them apart from the labours of the rest.

To trace the development of the right of property as established by rulers and administered by their agents, setting out with the interdict on theft in the Hebrew commandments, and continuing down to modern days, in which proprietorships of all kinds have been legally formulated in multitudinous detail and with great precision, would be no less out of place than it would be superfluous. It suffices for present purposes to note that this implication of the principle of justice, perceived from the first perhaps more clearly than any other, has gained in the course of social progress increased definiteness of recognition as well as increased extension and increased peremptoriness; so that now, breach of the right of property by unauthorized appropriation of a turnip or a few sticks, has become a

punishable offence; and there is ownership of a song, of a pattern, of a trade-mark.

§ 56. Supposing themselves to be justified, and indeed enjoined, by moral principle, many in our days are seeking to over-ride this right. They think it wrong that each man should receive benefits proportionate to his efforts—deny that he may properly keep possession of all which his labour has produced, leaving the less capable in possession of all which their labours have produced. Expressed in its briefest form, their doctrine is—Let unlike kinds and amounts of work bring like shares of produce—let there be “equal division of unequal earnings.”

That communism implies violation of justice as defined in foregoing chapters, is manifest. When we assert the liberty of each bounded only by the like liberties of all, we assert that each is free to keep for himself all those gratifications and sources of gratification which he procures without trespassing on the spheres of action of his neighbours. If, therefore, one obtains by his greater strength, greater ingenuity, or greater application, more gratifications or sources of gratification, than others, and does this without in any way trenching on the spheres of action of others, the law of equal freedom assigns him exclusive possession of all such extra gratifications and sources of gratification; nor can others take them from him without claiming for themselves greater liberty of action than he claims, and thereby violating the law.

In past times the arrangements made were such that the few superior profited at the expense of the many inferior. It is now proposed to make arrangements such that the many inferior shall profit at the expense of the few superior. And just as the old social system was assumed by those who maintained it to be equitable, so is this new social system assumed to be equitable by those who propose it. Being, as they think, undoubtedly right, this distribution

may properly be established by force; for the employment of force, if not avowedly contemplated, is contemplated by implication. With a human nature such as has been known throughout the past and is known at present, one who, by higher power, bodily or mental, or greater endurance of work, gains more than others gain, will not voluntarily surrender the excess to such others: here and there may be found a man who would do this, but he is far from being the average man. And if the average superior man will not voluntarily surrender to others the excess of benefit gained by his superiority, the implication is that he must be obliged to do this, and that the use of force to oblige him is justifiable. That the many inferior are physically able thus to coerce the few superior is agreed on both sides; but the assumption of the communists is that the required coercion of the minority who are best by the majority who are worst would be equitable.

After what was said in the early chapters of this Part, it scarcely needs pointing out that a system established in pursuance of this doctrine would entail degeneration of citizens and decay of the community formed by them. Suspension of that natural discipline by which every kind of creature is kept fit for the activities demanded by the conditions of life, would inevitably bring about unfitness for life and either prompt or slow disappearance.

§ 57. While absolute ethics thus asserts the right of property, and while no such breach of it as is implied by the schemes of communists is warranted by that relative ethics which takes account of transitional needs, relative ethics dictates such limitation of it as is necessitated for defraying the costs of protection, national and individual.

The truth recognized at the outset, that the preservation of the species, or that variety of it constituting a nation, is an end which must take precedence of individual preservation, has already been cited as justifying that subordination

of the right to life which is implied by exposure to possible death in defensive war, and as also justifying that subordination of the right to liberty which military service and subjection necessitate. Here it must be again cited as affording a legitimate reason for appropriating such portions of the possessions and the earnings of individuals, as may be required for adequately resisting enemies. But while there is thus a quasi-ethical justification for whatever encroachment on the right of property is necessitated for the purposes of defensive war, there is no justification for any such encroachment for the purposes of offensive war.

No less manifest is it that the right of property is legitimately subject to one further restriction. Property must be trenched upon for supporting those public administrations by which the right of property, and all other rights, are enforced. In a society wholly composed of men who duly respected one another's claims, no such partial invasion of the right of property would be called for; but in existing societies and in such societies as are likely to exist for a long time to come, the nearest approach to fulfilment of the law of equal freedom is made when the various deduced rights are sacrificed to the extent needful for preservation of the remainders. Relative ethics, therefore, warrants such equitably-distributed taxation as is required for maintaining order and safety.

## CHAPTER XIII.

### THE RIGHT OF INCORPOREAL PROPERTY.

§ 58. Even the dog, which not only fights to retain a bone he has found but fights also to preserve the coat or other object left in his charge by his master, can recognize ownership of a visible, tangible object; and hence it is clear that only a small reach of intelligence is needed for framing in thought the right of material property. But a much greater reach of intelligence is called for when the property is neither visible nor tangible. Constructive imagination is requisite for conceiving the existence of a mental product; and a higher constructive imagination is requisite for conceiving that a product of mental labour may as truly be considered property as a product of manual labour.

That the two stand on the same footing is demonstrable, whether we contemplate the positive or the negative element of the right. Remembering that justice under its positive aspect consists in the reception by each individual of the benefits and evils of his own nature and consequent conduct, it is manifest that if any individual by mental labour achieves some result, he ought to have whatever benefit naturally flows from this result. Justice, as we have defined it, requires that the connexion



between conduct and consequence in this case shall not be traversed any more than in any other case: the claim to the anticipated good is a valid claim.

No less obvious is it that the negative element of justice, which, among associated creatures, restrains the activities of each within the limits imposed by the like activities of all, forbids appropriation of another's mental product; or rather, forbids use of it without the assent of the producer, if it is of a kind from the use of which by others the producer sought advantage. Supposing a mental product elaborated by A, is, without his assent, used to their own advantage by B, C, and D, they commit breaches of the law of equal freedom; since they have severally benefited by utilizing the product of A's mental labour without affording A an opportunity of benefiting by utilizing any equivalent products, material or mental, of their own labour. Should it be replied that A's mental product is not taken away from him by others but only used by them; then the rejoinder is that with mental products, as with material products, the use by others may be the contemplated source of profit. One who builds a house and lets it, or makes a carriage which travellers hire, is held to be defrauded by those who occupy the house or hire the carriage without payment. He did not provide for his own use but for others' use and he does not receive that return the expectation of which prompted the building or the making. Even if no express contract has been made to pay the rent or hire, the owner is admittedly injured. Similarly, then, though one who has elaborated a mental product is not deprived of it by those who use it, yet even in the absence of any definite understanding with them, he is defrauded if others use it without giving him the benefit for which he worked.

There are two classes of mental products from others' use, or reception, of which, the producers expect advan-

tage: those embodied in books, musical compositions, works of plastic art, &c., and those embodied in inventions, mechanical or other. We will consider these separately.

§ 59. A man may read, listen and observe to any extent without diminishing the liberty of others to do the like. The knowledge thus obtained may be digested, re-organized and new knowledge educed from it by its possessor, without trespassing against his fellows. If he keeps to himself these derived conclusions valuable for guidance, or elaborated thoughts valuable for beauty, no one can say that he exceeds the limits of individual freedom; and if, instead of keeping them to himself, he decides to publish them, he may without aggressing upon any one impose his own terms. Others remain free to accept or refuse, and if they refuse, remain as they were before. But if others disregard his terms—if, having sold to them copies of his book, either himself or through an agent, on the tacit understanding that for so much money he gives, along with the printed paper, the right of reading and of lending to read, but not the right of reproduction; then any one who reproduces breaks the tacitly imposed conditions and commits an aggression. In return for the money paid, he takes a benefit far greater than that which was intended to be given for the money.

Strangely enough, there are intelligent men who contend that when a book has been issued it becomes public property, and that it is a corollary from the principles of free trade that any one who pleases may reprint it and sell copies for his own advantage. They assert that a copy-right is a monopoly—ought not to be considered a form of private property. But if nobody's property is taken by one who infringes copyright, how can the thing taken be of value? And if the thing taken be of no value, then the man who takes it would be no worse off if prevented from taking it. If he would be worse off, then clearly he has got something of value. And since this something of value

is not a natural product, the obtainment of it must be at the expense of some one who artificially produced it. As I some years since argued :—

“Those who, as members of the Copyright Commission, or as witnesses before it, have aimed, if not to abolish copyright, yet to restrict it in ways which would go far towards its abolition, have done so in the alleged interests of free-trade, and have sought to discredit the author’s claim, as now recognized, by calling it a monopoly. In the politico-economic sense a monopoly is an arrangement under which a person or body of persons is given by law the exclusive use of certain natural products, or agencies, or facilities, which, in the absence of such law, would be open to all; and the opponent of a monopoly is one who, asking nothing from the monopolist in the way of direct or indirect assistance, asks only that he also may use these same natural products, or agencies, or facilities. He wishes to carry on a business which in not the remotest way makes him dependent on the monopolist, but which he can carry on as well or better in the absence of the monopolist, and in the absence of everything done by him. Turn now to the commerce of literature, and ask how stands the so-called free-trader and the so-called monopolist? Does the so-called monopolist (the author) forbid the so-called free-trader (the reprinter) to use any of those appliances or processes, intellectual or mechanical, by which books are produced? No. These remain open to all. Does the so-called free-trader wish simply to use these open facilities independently, just as he might do if the so-called monopolist and his works were absent? No. He wishes to be dependent—he wishes to get advantages which he could not have were the so-called monopolist and his works absent. Instead of complaining, as the true free-trader does, that the monopolist is an obstacle put in his way, this pseudo free-trader complains that he may not utilise certain aids which have arisen from the labour of

the man whom he calls a monopolist. The true free-trader wishes only to use natural facilities, and complains of an artificial impediment. The pseudo free-trader, not content with the natural facilities, complains that he may not use, without buying it, an artificial aid. Certain opponents of copyright expressed astonishment before the Commission that authors should be so blinded by self-interest as not to see that in defending their claims, as now recognized, they were defending a monopoly. These authors might fitly express their astonishment that professed exponents of politico-economical principles should confound the case of a man who wishes to trade just as he might do had a certain other man never existed, with the case of a man who wishes to trade in a way that would be impossible had a certain other man never existed. The entire anti-copyright argument rests on the confusion of two things radically opposed, and with the establishment of the proper distinction the argument disappears." (*Edinburgh Review*, Oct. 1878, pp. 329-30.)

Considered, then, as a deduction from the fundamental principle of justice, copyright cannot, I think, be questioned with any show of reason.

§ 60. First customs, and then laws, have recognized the claims of mental producers. Originally, authors "were rewarded by the contributions of the audience or by the patronage of those illustrious persons in whose houses they recited their works:" disregard of the obligation to remunerate being regarded as mean, if not dishonest. In later Roman times, this proprietary right had become so far established as to have a mercantile value. Mr. Copinger points out that several ancient authors sold their productions; viz. Terence his *Eunuchus* and *Hecyra*, and Statius his *Agave*: the implication being that the copyists had acquired practically, if not by law, exclusive use of the MSS. In our own country, the equitable claim of the author has for

these two centuries been enforced. An Act of Charles II. forbade the printing of a work without the writer's assent; and under this act, copyrights were so far established as to be bought and sold. In 1774 it was decided that common law gives the author and his assigns sole right of publication in perpetuity; but that the period had been abridged by a previous statute to a term of years. The principle was subsequently extended to other forms of mental products, as specified in the essay by Mr. Robertson—to certain works of art by 8 Geo. II., c. 13, 7 Geo. III., c. 38, and 38 Geo. III., c. 71 (models and casts); to dramatic productions by 3 & 4 Will. IV., c. 15; to lectures by 5 & 6 Will. IV., c. 65; to musical productions by 5 & 6 Vict., c. 45; to lithographs by 15 & 16 Vict., c. 12, and to paintings in 1862.

By those who have legislated, as well as by those who have considered the question from an ethical point of view, the proper duration of copyright has been a problem not easily solved: should it be for the author and his descendants without limit, or for his life and a term of years after, or for his life only? There is no obvious reason why property of this kind should not be subject to the same laws of possession and bequest as other property. If it be said that the language, knowledge, and other products of past culture used by the author or artist, belong to society at large; the reply is that these mental products of civilization are open to all, and that an author or artist has not by using them diminished the ability of others to use them. Without abstracting anything from the common stock, he has simply combined with certain components of it something exclusively his own—his thoughts, his conclusions, his sentiments, his technical skill: things which more truly belong to him than do any visible and tangible things to their owners; since all of these contain raw material which has been removed from the potential use of others. So that in fact a production of mental labour may

be regarded as property in a fuller sense than may a product of bodily labour; since that which constitutes its value is exclusively created by the worker. And if so, there seems no reason why the duration of possession in this case should not be at least as great as the duration of possession in other cases.

Leaving this question, however, it is enough to note here that the right of property in this species of mental product, above deduced from the formula of justice, has, in later civilized times, come to be embodied in law; and that the embodiment of it in law has become more extensive and more specific as social development has become higher.

§ 61. What has been said above in relation to books and works of art, applies, by simple change of terms, to inventions. In imagining and bringing to bear any new, or partially new, mechanical appliance, or in devising some process different from, or better than, those before known, the inventor is making no greater use of pre-existing ideas, tools, materials, processes, than every other person may make. He abridges no one's liberty of action. Hence, without overstepping the prescribed limits, he may claim the exclusive benefit of his invention; and, if he discloses the secret, may, without aggressing upon any one, dictate the terms for utilization. While, contrariwise, another person who does not accede to his terms, cannot utilize his invention without breach of the law of equal freedom; since he appropriates a product of the inventor's labour without allowing the inventor to appropriate an equivalent product of his labour or an equivalent possession of some other kind.

That one who has spent years in thinking and experimenting, often joining expenditure of money with his brain-work and hand-work, should not be admitted to have an equitable claim to the resulting advantage, is a fact discreditable to the average conscience; and it is the more

discreditable when taken in connexion with the fact that various claims implying no labour or sacrifice are not only allowed but insisted upon. A speculator who makes money by a rise in the share-market, a sinecurist who has long received a large salary for doing nothing, and even a descendant of a king's mistress who is in receipt of a pension that was granted in perpetuity, has his conventionally-established rights tenderly considered ; while the mechanic who, working early and late, perhaps to the destruction of his health and the frittering away of all his means, has at length perfected a machine of marvellous efficiency, is not supposed to have acquired any "vested interest" in this outcome of the vital energies he has irrecoverably spent upon it. Most of his fellow men are quite willing that he should sacrifice time and money and labour, meanwhile jeering at him as a visionary schemer ; but when to their astonishment he succeeds, and the beneficial results flowing from his achievement become manifest, there arises the exclamation—"Oh! this is a monopoly and ought not to be tolerated." Even should those in power take measures to protect him and others such, so that if he can pay in fees the sum demanded he may take out a patent,\* the measures are taken not on the score of equity but on the score of policy. "A patent is not a thing which can be claimed as a right," the lawyers say ; but it is intended to "act as a stimulus to industry and talent." So that though the taking of the smallest material product—as a penny filched from the till by a shop-boy—is a punishable offence, this mental product, great as its worth and immense as the labour it has cost, may, in the absence of certain legal formalities, be turned by a capitalist to immense profit, without punishment and without disgrace.

Even were an invention of no benefit to society unless thrown open to unbought use, there would still be no just ground for disregarding the inventor's claim ; any more

\* Not many years since the total cost was several hundred pounds.

than for disregarding the claim of one who labours on his farm for his own benefit and not for public benefit. But as it is, society unavoidably gains immensely more than the inventor gains. Before he can receive any advantage from his new process or apparatus, he must confer advantages on his fellow men—must either supply them with a better article at the price usually charged, or the same article at a lower price. If he fails to do this, his invention is a dead letter; if he does it, he makes over to the world at large nearly all the new mine of wealth he has opened. By the side of the profits which came to Watt from his patents, place the profits which his improvements in the steam-engine have since brought to his own nation and to all nations, and it becomes manifest that the inventor's share is infinitesimal compared with the share mankind takes. And yet there are not a few who would appropriate even his infinitesimal share!

But insecurity of this kind of mental property, like insecurity of material property, brings disastrous results. As in a society so governed that one who accumulates wealth cannot keep it, an unprosperous state results from lack of capital; so, among a people who ignore the inventor's claims, improvements are inevitably checked and industry suffers. For, on the average, ingenious men will decline to tax their brains without any prospect of returns for their labours.

Here, however, we are chiefly concerned to observe that, if not from motives of equity, then from motives of policy, the inventor's claim has slowly been established by law. Though, in our own country, patents were originally granted as matters of favour; and though, for a long period, they were confounded with monopolies rightly so called; yet when, in 1623, monopolies rightly so called were made illegal, there was recognized a distinction between them and the exclusive rights granted to inventors. Besides the belief that it was expedient to encourage inventors, there



was perhaps a dim perception that while, in the case of a monopoly rightly so called, other people are in no way indebted to the monopolist for ability to carry on their activities, but would have done as well or much better had he never existed; in the case of the so-called monopoly of an inventor, other people who use his invention are indebted to him, and had he never existed would have been unable to do that which they now do with his help. Whether with or without any vague consciousness of this, the inventor's claim, for several centuries legislatively enforced, has of late come to be more carefully regarded; and, by great reduction of fees, the impediments in the way of obtaining legal protection have been reduced. To which add that there has been a like growing recognition in the laws of other countries, and a much greater one in America; with a resulting superiority in labour-saving appliances.

A restriction of the right thus set forth and justified, must be named. It is a truth, made familiar by modern experience, that discoveries and inventions, while in part results of individual genius, are in part results of pre-existing ideas and appliances. One of the implications, also made familiar by modern experience, is that about the period when one man makes a discovery or invents a machine, some other man, possessed of similar knowledge and prompted by a like imagination, is on the way to the same discovery or invention; and that within a moderate period this discovery or invention is tolerably certain to be made elsewhere—possibly by more than one. A long-continued exclusive use of his invention would therefore be inconsistent with other equitable claims likely to arise; and hence there is need for a limitation of the period during which he may rightly receive protection. Over how many years the protection should extend, is a question which cannot be answered here; and, indeed, cannot be answered at all in any but an empirical manner. To estimate the proper period account should be taken of the observed intervals of

time commonly elapsing between similar or identical inventions made by different men. There might fitly be some recognition of the prolonged thought and persevering efforts bestowed in bringing the invention to bear; and there should also enter into the calculation an estimate, based on evidence, of the probable interval during which exclusive use of the invention should be insured to make possible an adequate return for labour and risk. Obviously the case is one in which the relations of the individual to other individuals and to society, are so involved and so vague, that nothing beyond an approximately equitable decision can be reached.

§ 62. Yet another kind of that which we may class as incorporeal property has to be here dealt with—a kind distinguishable from the kinds dealt with above, in the respect that it does not finally issue in physical benefit, but issues in mental benefit—in the agreeable emotion caused by other men's approval.

This form of incorporeal property is, indeed, an accompaniment of the forms arising from mental achievements. The reputation obtained by a poem, a history, a scientific treatise, a work of plastic art, or a musical composition, is regarded by the producer as part of the reward for his labour—often, indeed, the chief part. And at the same time that he is held entitled to the resulting credit, the endeavour made by another to obtain by plagiarism the whole or part of this credit, is regarded as a disgrace. Though there is no legal penalty for this kind of theft, yet there is a social penalty. Similarly with a discovery or an invention. Not the pecuniary profit only is recognized as rightly belonging to the originator, but also the applause appropriate to his ingenuity or insight; and reprobation is vented on one who tries to intercept this applause by pretending to be the inventor or the discoverer. Tacitly, if not overtly, the acquired share in the good opinion of

fellow men is considered a thing to be enjoyed; while the usurpation of it is condemned as dishonest. The reputation gained is treated as incorporeal property.

But another and far more important kind of incorporeal property is that which arises, not from intellectual achievement, but from moral conduct. If the reputation brought by mental actions which take the form of production, may fitly be regarded as incorporeal property, still more may the reputation brought by mental actions issuing in rectitude, truthfulness, sobriety, and good behaviour at large, which we call character; and if deprivation of the one is flagitious still more is deprivation of the other. Earned like other property by care, self-denial, perseverance, and similarly giving its owner facilities for gaining his ends and satisfying divers desires, the esteem of others is a possession, having analogies with possessions of a palpable nature. Indeed it has, like palpable possessions, a money value; since to be accounted honest is to be preferred as one with whom dealings may be safely carried on, and to lose character is to lose business. But apart from this effect, an estate in the general good-will appears to many of more worth than one in land. By some great action to have won golden opinions, may be a richer source of gratification than to have obtained bank-stock or railway-shares. Hence, men who have invested their labour in noble deeds, and receive by way of interest the best wishes and cordial greetings of society, may be considered as having claims to these rewards of virtue, resembling the claims of others to the rewards of industry. Of course this is true not only of those who are distinguished by unusual worth; it is true of all. To the degree in which each has legitimately gained a good repute, we must hold him entitled to it as a possession—a possession which, without quoting the hackneyed saying of Iago, may be held of more value than any other.

The chief way in which this product of good conduct differs from other mental products, is that though, like

them, it may be taken away, it cannot be appropriated by the person who takes it away. This may, perhaps, be considered a reason for classing the interdict against injuring another's character as an interdict of negative beneficence rather than an interdict of justice: an illustration of the truth that the division of ethics into separate sections cannot, in all cases, be clearly maintained. Still, since a good reputation is acquired by actions carried on within the prescribed limits to actions, and is, indeed, partly a result of respect for those limits; and since one who destroys any or all of the good reputation so acquired, interferes with another's life in a way in which the other does not interfere with his life; it may be argued that the right to character is a corollary from the law of equal freedom. If it be said that whoever is thus injured may (in some cases at least) retaliate on the injurer, as we see in recrimination, or, as among the vulgar, in the mutual calling of names; the reply is that, as shown in chapter VI, the law of equal freedom, rightly interpreted, does not permit exchange of injuries; and as it does not countenance physical retaliation neither does it countenance moral retaliation. So that though another's good character, when taken away, cannot be appropriated by the traducer, the taking of it away is still a breach of the law of equal freedom, in the same way that destroying another's clothes, or setting fire to his house, is a breach.

This reasoning concerns only those cases in which the good reputation enjoyed has been rightly obtained, and does not touch those cases in which it has been obtained by deception or survives through others' ignorance. Consequently, it cannot be held that one who injures another's good reputation by stating facts at variance with it which are not generally known, breaks the law: he simply takes away that which ought not to have been possessed. Whatever judgment may be passed on his act, it cannot be

assimilated to acts in which the character taken away is one that is legitimately owned. Indeed, in many cases, his act is one which conduces to the welfare of others, and, in some cases, is prompted by the desire to prevent trespasses upon them. Hence, though it may be held punishable, in common with acts which take away character rightly possessed, there does not seem to be any ethical warrant for the punishment.

There remains to be noticed the blameworthiness of those who aid and abet the taking away of character by repeating injurious statements without taking any trouble to ascertain their truth. At present those who circulate a calumny without inquiring into the evidence, or estimating the probability, are supposed by most people to have committed no offence; but, hereafter, it will perhaps be seen that they cannot be exonerated. Indeed in law they are not exonerated, but are liable to penalty.

As in the preceding cases, the ethical requirements have, as just implied, grown into legal recognition. The forbidding of false witness against a neighbour is of ancient date. Libel, even when directed against the dead, was punishable under the Roman law. In lower stages of civilization, however, protection of character by punishment of slanderers, was established chiefly in the interests of the superior. The Buddhist code prescribed a severe punishment for insulting speech against a man of the highest caste. During early times in Europe, men of position were supposed to preserve their characters, as well as their possessions, by force of arms. Later there came legal protection of the higher from libels uttered by the lower, against whom the remedy by duel was not available. In the reign of Edward I, this remedy was initiated; and it was more fully enacted, with this avowed purpose, by Richard II. Instead of being a law for the advantage of a privileged class, the law of libel eventually became a law for the advantage of all classes; and has, in our own days, come

to be constantly invoked with effect : indeed with too much effect, considering that that which may be regarded as fair criticism is sometimes held to be libellous.

Here then, as before, a conclusion which may be deduced from the fundamental principle of equity, has, with the advance of society, acquired a legal embodiment.

## CHAPTER XIV.

### THE RIGHTS OF GIFT AND BEQUEST.

§ 63. Complete ownership of anything implies power to make over the ownership to another; since a partial or entire interdict implies partial or entire ownership by the authority issuing the interdict, and therefore limits or overrides the ownership. Hence, if the right of property is admitted, the right of gift is admitted.

The last has, indeed, as deep a root as the first. If we refer back to those conditions to sustentation of the individual and of the species, from which the fundamental principles of ethics are deducible, we see that while individual preservation depends on the habitual maintenance of the natural relation between efforts and the products of efforts, the preservation of the species depends on the transfer of parts of such products, in either prepared or crude forms, from parents to offspring. The ability to give away that which has been acquired, consequently underlies the life of every species, including the human species.

Of course there cannot be assigned the same warrant for the right of gift to others than offspring. Of this, while we say, in the first place, that it is a corollary from the right of property, we may say, in the second place, that it is also a corollary from the primary principle of justice. The joint transaction of giving and receiving, directly concerns only the donor and the recipient; and leaves all other persons

unaffected in so far as their liberties to act are concerned. Though the handing over something possessed, by A to B, may affect C, D, E, &c., by negating certain activities which they proposed to pursue; such activities, contingent on events that might or might not happen, cannot be included among those activities which may not be hindered without aggressing upon them. Their spheres of action remain intact.

If the right of gift to others than offspring had to be decided upon from an expediency point of view, strong reasons might be assigned for concluding that unrestrained giving should not be allowed. One who duly weighs the evidence furnished by the Charity Organization Society, as well as by individuals who have investigated the results of careless squandering of pence, will be inclined to think that more misery is caused by charity (wrongly so-called) than by all the crimes which are committed; and will perhaps infer that benefit would result if almsgiving were forbidden. But in this case, universal belief in the right is so strong that no one dreams of denying it for reasons of apparent expediency.

Legislation clearly acknowledges this corollary from the law of equal freedom. Without going back in search of a law asserting the right of gift, which probably does not exist, it suffices to name the implied recognition among ourselves by an act of Elizabeth, which, while it asserts that a deed of gift is good against the grantor, makes it invalid if put in bar of the claims of creditors: implying, in fact, that while a man may give that which is his own, he may not give that which, in equity, belongs to others.

§ 64. The right of gift implies the right of bequest; for a bequest is a postponed gift. If a man may legitimately transfer what he possesses to another, he may legitimately fix the time at which it shall be transferred. When he does this by a will, he partially makes the



transfer, but provides that the transfer shall take effect only when his own power of possession ceases. And his right to make a gift subject to this condition, is included in his right of ownership; since, otherwise, his ownership is incomplete.

One of the implications is that a testator cannot equitably be restrained in the distribution he makes of his property, in so far as the choice of recipients is concerned, or the amounts assigned to such recipients. If other men in their corporate capacity direct that he shall give to A or shall not give to B, or shall give to A, B, and others in such and such proportions, then other men make themselves part-owners of his property: it shall be turned to purposes which they will and not to purposes which he wills. And to the extent that his power of bequest is thus interfered with, property is taken out of his possession while he still lives.

One of the illustrations of the general truth that the civilized man has greater freedom of action than the partially-civilized man and the uncivilized man, is the fact that the right of bequest, scarcely recognized at first, has gradually established itself. Before law exists, custom, no less peremptory than law, habitually prescribes the modes in which property descends. Among sundry Polynesians there is primogeniture, and in Sumatra equal division among male children. Hottentots and Damaras enforce primogeniture in the male line. On the Gold Coast, and in some parts of Congo, relatives in the female line inherit. Among the Eghas and neighbouring peoples, inheritance by the eldest son includes even his father's wives, except his mother. In Timbuctoo, the prescribed share of a son is double that of a daughter; while sometimes among the Ashantis, and habitually among the Fulahs, slaves and adopted children succeed: some freedom of bequest being thus possessed by these higher of the African races. In Asia, the custom of

Arabs, Todas, Ghonds, and Bodo and Dhimals, requires equal division among the male sons. Sister's sons inherit the property of a Kasia; and only accounts of Karens and Mishmis mention a father's ability to dispose of his goods as he pleases. Similarly was it with the European races in early times. Tacitus writes of the primitive Germans that "there are no wills;" Belloguet concludes that "Celtic, like German, customs did not admit a right of testament;" and Koenigswater says the like of the Saxons and Frisians. The original ownership by the village-community passed into family-ownership; so that estates could not be alienated from children and other relatives. In the Merovingian period personalty could be bequeathed, but land only if heirs were lacking. Feudalism, inheriting these usages, and requiring that each fief should furnish its contingent of men-at-arms properly led, regulated the mode of descent of land for this purpose; and, in so far, negatived the power of bequest. But the growth of industrialism, with its freer forms of social relations, has brought increased freedom in the disposition of property; and it has brought this in the greatest degree where industrialism has most subordinated militancy, namely, among ourselves and the Americans. In France, the State decides for the testator how part of his property shall be distributed among relatives; and there exists a like limitation of his power in other European States. But here, freedom of bequest, in respect of personalty, is uninterfered with in so far as distribution goes; and though, in respect of such realty as is entailed, the power of the proprietor is suspended, and becomes operative only under certain conditions, yet there is a manifest tendency towards removal of this last restriction.

§ 65. But while, along with the right of gift, the right of bequest is implied by the right of property,—while a man's ownership may justly be held to include the right

of leaving defined portions of what he owns to specified recipients; it does not follow that he is ethically warranted in directing what shall be done by the recipients with the property he leaves to them.

Presented in its naked form, the proposition that a man can own a thing when he is dead, is absurd; and yet, in a disguised form, ownership after death has been largely in past times, and is to a considerable extent at present, recognized and enforced by the carrying out of a testator's orders respecting the uses to be made of his bequests. For any prescribing of such uses, implying continuance of some power over the property, implies continuance of some possession; and wholly or partially takes away the possession from those to whom the property is bequeathed. Few will deny that the Earth's surface, and the things on it, should be owned in full by the generation at any time existing. Hence the right of property may not equitably be so interpreted as to allow any generation to tell subsequent generations for what purposes, or under what restrictions, they are to use the Earth's surface or the things on it.

This conclusion is no less forced on us if we refer back to the derivation of the right of property from the laws of life. For if, as we have seen, a pre-requisite to maintenance of the species is that each individual shall receive the benefits and suffer the evils of his own conduct—if the pre-requisite to continued sustentation is that when effort has been expended the product of that effort shall not be intercepted or taken away—if the right of property has this biological requirement for its ultimate justification; then, the implication is that, being a condition to the maintenance of life, it ceases with the cessation of life.

Strictly interpreted, therefore, the right of gift, when it takes the form of bequest, extends only to the distribution of the bequeathed property, and does not include specification of the uses to which it shall be put.

§ 66. Here, however, we come upon certain qualifications arising from the fact that among human beings there are other relations than those between adult citizens—the relations of parents to offspring. We have seen that the ethics of the State and the ethics of the Family are opposed in nature; and hence when, as happens at the death of a parent, the ethics of both enter into the question, a compromise has to be effected.

It may, indeed, be held that were human life normal, instead of having the abnormalities due to its transitional state, difficulties would rarely arise; since the deaths of parents would not occur until children were adults, and property bequeathed to them might pass at once into their possession without restrictions. But as, under existing conditions, the deaths of parents often occur at times when children are unable to take care of themselves and their property, it results that, to fulfil parental obligations as far as possible, parents must so specify the uses of bequeathed property as to further their children's welfare during immaturity. Inasmuch as the products acquired by efforts are possessed, not for self-sustentation only, but for sustentation of offspring, it follows that when self-sustentation is prematurely ended, the acquired products may rightly be bequeathed for the sustentation of offspring; and the use of them for this purpose, being no longer possible to the parent, may be given in trust to some other person: such continued possession by the parent as is thus implied, lapsing when the offspring become adult.

This bequest of property in trust for the benefit of children, necessitates a fixing of the age at which they may be judged capable of taking care of themselves and their possessions; and in fixing this age ethical considerations give us no help. All we may infer from them is that such continued ownership of property by a dead parent as is implied by prescribing the uses to be made of it for the benefit of children, may rightly last up to that age at

which ordinary experiences lead men to think that the immaturity of children has ended—an age necessarily indefinite; since it varies with each type of mankind, is differently estimated by peoples of the same type, and is unlike in different individuals.

§ 67. A more perplexing question here arises. Derived though the ultimate law, alike of sub-human justice and human justice, is from the necessary conditions to self-preservation and the preservation of the species; and derived from this as are both the right of possession during life and that right of qualified possession after death implied by bequests in trust for immature children; a kindred derivation of any further right to prescribe the uses of bequeathed property appears impracticable. Nothing beyond a quite empirical compromise seems possible. On the one hand, ownership of property after death is unwarranted by the ultimate principle of justice save in the case just named. On the other hand, when property has been acquired, perhaps by unusual industry, perhaps by great skill in business (implying benefit to others as well as to self) or perhaps by an invention permanently valuable to mankind, it is hard that the owner should be wholly deprived of power to direct the uses to be made of it after his death: especially where he has no children and must leave it unbequeathed or bequeath it to strangers.

Evidently a distinction is to be made. One who holds land subject to that supreme ownership of the community which both ethics and law assert, cannot rightly have such power of willing the application of it as involves permanent alienation from the community. In respect of what is classed as personalty, however, the case is different. Property which is the product of efforts, and which has resulted either from the expenditure of such efforts upon raw materials for which equivalents (representing so much labour) have been given or from the savings out of wages

or salaries, and is thus possessed in virtue of that relation between actions and their consequences on the maintenance of which justice insists, stands in another category. Such property being a portion of that which society has paid the individual for work done, but which he has not consumed, he may reasonably contend that in giving it back to society, either as represented by certain of its members or by some incorporated body, he should be allowed to specify the conditions under which the bequest is to be accepted. In this case, it cannot be said that anything is alienated which belongs to others. Contrariwise, others receive that to which they have no claim ; and are benefited, even when they use it for prescribed purposes : refusal of it being the alternative if the purposes are not regarded as beneficial. Still, as bequeathed personal property is habitually invested, power to prescribe its uses without any limit of time, may result in its being permanently turned to ends which, good though they were when it was bequeathed, have been rendered otherwise by social changes. Hence an empirical compromise appears needful. We seem called upon to say that a testator should have some power of directing the application of property not bequeathed to children, but that his power should be limited ; and that the limits must be settled by experience of results.

§ 68. Since social self-preservation takes precedence of individual self-preservation, it follows that there exists a warrant for such qualification of the right of bequest as arises from the need for meeting the cost of protecting the society against other societies, and protecting individuals against other individuals. Granting that under existing conditions it is relatively right that the community, through its governmental agency, should appropriate the property of each citizen to the extent requisite for maintaining national defence and social order ; it becomes a question of policy in what way the needful appropriations shall be

made; and if it appears convenient that part of the required revenues should be raised by per-centages on bequeathed property, no ethical objection can be urged.

Subject to this qualification, we see that the foregoing deductions from the law of equal freedom are justified by their correspondence with legislative provisions; and that there has been a progressive increase in the correspondence between the ethical and the legal *dicta*. The right of gift, not everywhere admitted in old times, has been in later times tacitly recognized by Acts which limit it to property that is equitably a man's own. The right of bequest, scarcely existing in early social stages, has been established more and more in proportion as the freedom of the individual has become greater; and has reached the fullest legislative assertion under our own free institutions and the American ones derived from them. Directions for the uses of property left to immature children, which we have seen to be ethically warranted, have become authorized by law. And such restrictions on the power of ordering what shall be done with property otherwise bequeathed, as are embodied in laws of mortmain and the like, harmonize with ethical inferences.

## CHAPTER XV.

### THE RIGHTS OF FREE EXCHANGE AND FREE CONTRACT.

§ 69. What was said at the outset of the last chapter concerning the right of gift, may be said here, with change of terms, concerning the right of exchange; for exchange may not unfitly be regarded as a mutual cancelling of gifts. Probably most readers will think this a fanciful interpretation of it; but, contrariwise, it is an interpretation forced on us by inspection of the facts. For whereas barter is not universally understood among the lowest tribes, the making of presents is universally understood; and where the making of presents becomes habitual, there grows up the conception that equivalent presents should be made in return. Numerous books of travel exemplify this conception. Evidently, then, from the exchange of equivalent presents, there may readily grow up a constant practice of exchange from which the idea of presents has dropped out.

But without making the right of exchange a corollary from the right of gift, it is clear that the one like the other is included in the right of property; since ownership of a thing is incomplete if it may not be transferred in place of another thing received.

Further, the right of exchange may be asserted as a direct deduction from the law of equal freedom. For of the two who voluntarily make an exchange, neither assumes



greater liberty of action than the other, and fellow men are uninterfered with—remain possessed of just as much liberty of action as before. Though completion of the exchange may shut out sundry of them from advantageous transactions, yet as their abilities to enter into such transactions depended wholly on the assent of another man, they cannot be included in their normal spheres of action. These continue what they would have been had the two persons who have bargained never existed.

Obvious as is the right of exchange, recognition of it in law has arisen but slowly ; and, in most parts of the world, is still far from complete. Among the Polynesian races, exchange is variously interfered with by the chiefs: here, foreign trade being monopolized by them ; there, prices fixed by them ; and in other places the length of a day's work. Similarly in Africa. The right of pre-emption in trade is possessed by chiefs among Bechuanas and Inland Negroes ; and there is no business without royal assent. In Ashanti only the king and great men can trade ; and in Shoa certain choice goods can be bought only by the king. The Congo people, Dahomans, and Fulahs, have commercial chiefs who regulate buying and selling. Kindred limitations existed among the Hebrews and Phoenicians, as also among the Ancient Mexicans and Central Americans. At the present time the men of some South American tribes, as the Patagonians and Mundrucus, have to obtain authority from chiefs before they can trade. Like facts, presented by the European nations, down from the time when Diocletian fixed prices and wages, need not be detailed. All it concerns us to note is that interferences with exchange have diminished as civilization has advanced. They have decreased, and in some cases have disappeared from the transactions between members of the same society ; and have partially disappeared later from the transactions between members of different societies. Moreover with this, as with other rights, the interferences have become smallest where the development

of the industrial type with its concomitant free institutions, has become greatest, namely, among ourselves.

It is worthy of note, however, that the changes which established almost entire freedom of trade in England, were chiefly urged on grounds of policy and not on grounds of equity. Throughout the Anti-Corn-Law agitation little was said about the "right" of free exchange; and at the present time such reprobation as we hear of protectionists, at home and abroad, is vented exclusively against the folly of their policy and not against its inequity. Nor need we feel any surprise at this if we remember that even still the majority of men do not admit that there should be freedom of exchange in respect of work and wages. Blinded by what appear to be their interests, artizans and others tacitly deny the rights of employer and employed to decide how much money shall be given for so much labour. In this instance the law is in advance of the average opinion: it insists that each citizen shall be at liberty to make whatever bargains he pleases for his services; while the great mass of citizens insist that each shall not be at liberty to do this.

§ 70. Of course with the right of free exchange goes the right of free contract: a postponement, now understood now specified, in the completion of an exchange, serving to turn the one into the other.

It is needless to do more than name contracts for services on certain terms; contracts for the uses of houses and lands; contracts for the completion of specified works; contracts for the loan of capital. These are samples of contracts which men voluntarily enter into without aggressing on any others—contracts, therefore, which they have a right to make.

In earlier times interferences with the right of exchange were of course accompanied by interferences with the right of contract. The multitudinous regulations of wages and

prices, which century after century encumbered the statute books of civilized peoples, were examples. Decreasing with the decrease of coercive rule, these have, in our days, mostly disappeared. One such gradual change may be instanced as typifying all others—that which usury laws furnish. In sundry cases where but small progress towards free institutions had been made, the taking of interest for money lent was forbidden altogether; as among the Hebrews, as among ourselves in the remote past, and as among the French at the time of the greatest monarchical power. Then, as a qualification, we have the fixing of maximum rates; as in early ages by Cicero for his Roman province; as in England by Henry VIII at 10 per cent., by James I at 8 per cent., by Charles II at 6 per cent., by Anne at 5 per cent.; and as in France by Louis XV at 4 per cent. Finally we have removal of all restrictions, and the leaving of lenders and borrowers to make their own bargains.

While we observe that law has in this case gradually come into correspondence with equity, we may also fitly observe one exceptional case in which the two agree in forbidding a contract. I refer to the moral interdict and the legal interdict against a man's sale of himself into slavery. If we go back to the biological origin of justice, as being the maintenance of that relation between efforts and the products of efforts which is needful for the continuance of life, we see that this relation is suspended by bondage; and that, therefore, the man who agrees to enslave himself on condition of receiving some immediate benefit, traverses that ultimate principle from which social morality grows. Or if we contemplate the case from an immediately ethical point of view, it becomes manifest that since a contract, as framed in conformity with the law of equal freedom, implies that the contracting parties shall severally give what are approximately equivalents, there can be no contract, properly so called, in which the terms

are incommensurable; as they are when, for some present enhancement of his life, a man bargains away the rest of his life. So that when, instead of recognizing the sale of self as valid, law eventually interdicted it, the exception it thus made to the right of contract was an exception which equity also makes. Here, too, law harmonized itself with ethics.

§ 71. These rights of exchange and contract have, of course, in common with other rights, to be asserted subject to the restrictions which social self-preservation in presence of external enemies necessitate. Where there is good evidence that freedom of exchange would endanger national defence, it may rightly be hindered.

This is a limitation of the right which, in stages characterized by permanent militancy, is obviously needful. Societies in chronic antagonism with other societies must be self-sufficing in their industrial arrangements. During the early feudal period in France, "on rural estates the most diverse trades were often exercised simultaneously;" and "the castles made almost all the articles used in them." The difficulties of communication, the risk of loss of goods in transit, and the dangers arising from perpetual feuds, made it requisite that the essential commodities should be produced at home. That which held of these small social groups has held of larger social groups; and international freedom of exchange has therefore been greatly restricted. The outcry against being "dependent on foreigners," which was common during the Anti-Corn-law agitation, was not without some justification; since it is only during well-assured peace that a nation may, without risk, buy a large part of its food abroad, instead of growing it.

Beyond this qualification of the rights of exchange and contract, there remains no other having an ethical warrant. Interference with the liberty to buy and sell for other reasons than that just recognized as valid, is a trespass, by

whatever agency effected. Those who have been allowed to call themselves "protectionists" should be called aggressionists; since forbidding A to buy of B, and forcing him to buy of C (usually on worse terms), is clearly a trespass on that right of free exchange which we have seen to be a corollary from the law of equal freedom.

The chief fact to be here noted, however, is that among ourselves, if not among other peoples, the ethical deduction, after being justified inductively, has gained a recognition in law; if not on moral grounds, yet on grounds of policy.

## CHAPTER XVI.

### THE RIGHT TO FREE INDUSTRY.

§ 72. Though, under one of its aspects, industrial freedom is implied by the rights to free motion and locomotion; and though, under another of its aspects, it is implied by the rights to free exchange and free contract; yet it has a further aspect, not clearly included in these, which must be specifically stated. Though demonstration of it is scarcely called for, yet it is needful to indicate it for the purpose of showing how little it was once recognized and how fully it is recognized now.

By the right to free industry is here meant the right of each man to carry on his occupation, whatever it may be, after whatever manner he prefers or thinks best, so long as he does not trespass against his neighbours: taking the benefits or the evils of his way, as the case may be. Self-evident as this right now seems, it seemed by no means self-evident to people in past times. Naturally, indeed, it could not well be self-evident while more obvious rights were unrecognized.

Just noting that, in the far past, industry was under regulations having a religious authority, as among the Hebrews, who, in *Deuteronomy* XXII, 8 &c., were directed concerning methods of building and agriculture, it will suffice to observe how great and persistent were the restraints on industrial liberty among European peoples

during the supremacy of that militant organization which in all ways subordinates individual wills. In Old-English days, the lord of the manor in Court-leet inspected industrial products; and, after the establishment of kingship, there came directions for cropping of lands, times of shearing, mode of ploughing. After the Conquest regulations for dyeing were enacted. From Edward III onwards to the time of James I, official searchers had to see that various wares were properly made. Certain traders were told how many assistants they should have; the growing of particular plants was made compulsory; tanners had to keep their hides in the pits for specified periods; and there were officers for the assize of bread and ale. With the development of institutions characterizing the industrial type, these restrictions on industrial freedom diminished; and, at the time George III began to reign, five-sixths of them had disappeared. Increasing though they did during the war-period brought on by the French revolution, they again diminished subsequently; until there had been abolished nearly all State-interferences with modes of production. Significantly enough, however, the recent revival of militancy here, consequent on the immense re-development of it on the Continent (set going, for the second time, by that greatest of all modern curses the Bonaparte family) has been accompanied by a reaction towards industrial regulations; so that during the last 30 years there have been numerous acts saying how businesses shall be carried on: ranging from the interdict on taking meals in match factories except in certain parts, to directions for the building and cleaning of artizans' dwellings—from orders for the painting of bakehouses to acts punishing farmers if they employ uneducated children.

Meanwhile it is to be observed that in France, where the militant activities entailed by surroundings have developed more highly the militant type of structure, industrial regulations have been more elaborate and more rigorous:

having been carried, during the latter days of the monarchy, to a scarcely credible extent. "Swarms of public functionaries" enforced rules continually complicated by new ones to remedy the insufficiency of the old: directing, for example, "the lengths pieces of cloth are to be woven, the pattern to be chosen, the method to be followed, and the defects to be avoided." Even after the Revolution, when greater industrial freedom was temporarily achieved, interferences again multiplied; so that in 1806, according to Levasseur, public administrations fixed the length of the day's labour, the hours of meals, and the beginning and end of the day at the various seasons. Indeed, it is instructive to observe how, in France, where the idea of equality has always subordinated the idea of liberty; and where, under the guise of a free form of government, citizens have all along submitted without protest to a bureaucracy which has been as despotic under the republican form of government as under the monarchical; and where reversions to the completely militant type of structure have more than once occurred, and have more than once almost occurred; the industrial freedom of the individual, in common with other freedoms, has never been established so fully as here; where *la gloire* has not been so predominant an aim and militant organization has never been so pronounced.

But details apart, a general survey of the facts proves that during the advance from those early stages in which small respect was paid to life, liberty, and property, to those later stages in which these are held sacred, there has been an advance from a *régime* under which modes of production were authoritatively prescribed, to a *régime* under which they are left to the will of the producer; and in places where legislation most recognizes individual freedom in other respects, it most recognizes individual freedom in this respect.



## CHAPTER XVII.

### THE RIGHTS OF FREE BELIEF AND WORSHIP.

§ 73. If we interpret the meanings of words literally, to assert freedom of belief as a right is absurd ; since by no external power can this be taken away. Indeed an assertion of it involves a double absurdity ; for while belief cannot really be destroyed or changed by coercion from without, it cannot really be destroyed or changed by coercion from within. It is determined by causes which lie beyond external control, and in large measure beyond internal control. What is meant is, of course, the right freely to *profess* belief.

That this is a corollary from the law of equal freedom scarcely needs saying. The profession of a belief by any one, does not of itself interfere with the professions of other beliefs by others ; and others, if they impose on any one their professions of belief, manifestly assume more liberty of action than he assumes.

In respect of those miscellaneous beliefs which do not concern in any obvious way the maintenance of established institutions, freedom of belief is not called in question. Ignoring exceptions presented by some uncivilized societies, we may say that it is only those beliefs the profession of which seems at variance with the existing social order, which are interdicted. To be known as one who holds that the political system, or the social organization, is not what it

ought to be, entails penalties in times and places where the militant type of organization is unqualified. But, naturally, where fundamental rights are habitually disregarded, no regard for a right less conspicuously important is to be expected. The fact that the right of political dissent is denied where rights in general are denied, affords no reason for doubting that it is a direct deduction from the law of equal freedom.

The right to profess beliefs of the religious class, has for its concomitant the right to manifest such beliefs in acts of worship. For these, too, may be performed without diminishing the like rights of fellow men, and without otherwise trespassing against them in the carrying on of their lives. So long as they do not inflict nuisances on neighbouring people, as does the untimely and persistent jangling of bells in some Catholic countries, or as does the uproar of Salvation Army processions in our own (permitted with contemptible weakness by our authorities) they cannot be equitably interfered with. Those who profess other religious beliefs, in common with those who profess no religious beliefs, remain as free as before to worship in their own ways or not to worship at all.

The enunciation of these rights, needful for the symmetry of the argument, is in our day and country almost superfluous. But England is not the world; and even in England there still survive certain practical denials of these rights.

§ 74. The savage, far from possessing that freedom which sentimental speculators about society used to imagine, has his beliefs dictated by custom, in common with those usages which peremptorily regulate his life. When we read that in Guinea, a man who does not fulfil the prophecy of the fetish by getting well, is strangled because he has made the fetish lie, we may readily understand that the expression of scepticism is practically

unknown. The Fijians, who, being worshippers of cannibal gods, expressed horror at the Samoans because they had no worship like their own, and whose feeling towards Jackson for disregarding one of their religious interdicts was shown by angrily calling him "the white infidel," are not likely to have tolerated any religious scepticism among their own common people, any more than they are likely to have tolerated any political scepticism respecting the divine authority of their chiefs : a conclusion we are compelled to draw on reading, in Williams, that a Fijian who had been in America endangered his life by saying that America was larger than Fiji.

Turning to ancient civilizations, we meet with various denials of the right of free belief. There is Plato's prescription of punishments for those who dissented from the Greek religion; there is the death of Socrates for attacking the current views concerning the gods; and there is the prosecution of Anaxagoras for implying that the Sun was not the chariot of Apollo. Passing to the time when the profession of the Christian belief was penal, and then to the subsequent time when the profession of any other belief was penal, the only thing we have to note in connexion with the doings of inquisitors and the martyrdoms, now of Protestants by Catholics and then of Catholics by Protestants, is that the thing insisted on was external conformity. It sufficed if there was nominal acceptance of the prescribed belief, without any evidence of real acceptance. Leaving the period of these earlier religious persecutions, during which there was a tacit denial of the right of free belief, it suffices to note that since the Toleration Act of 1688, which, while insisting on acknowledgment of certain fundamental dogmas, remitted the penalties on dissent from others, there have been successive relaxations. The disqualifications of dissenters for public posts were removed; by and by those of Catholics and eventually those of Jews; and still more recently the substitution of affirmation for oath has

made it no longer legally imperative to assert or imply belief in a God, before being permitted to fulfil certain civil functions. Practically, every one is now free to entertain any creed or no creed, without incurring legal penalty, and with little or no social penalty.

By a kindred series of changes there has been gradually established freedom of political belief. Punishment or ill-usage for rejecting such a political dogma as the divine right of kings, or for calling in question the right of some particular man to reign, have ceased. The upholders of despotism and the avowed anarchists are equally at liberty to think as they please.

§ 75. Is freedom of belief, or rather the right freely to profess belief, subject to no qualification? Or from the postulate that the needs for social self-preservation must override the claims of individuals, are we to infer that under certain conditions the right may properly be limited?

The only cases in which limitation can be urged with manifest force, are those in which the beliefs openly entertained are such as tend directly to diminish the power of the society to defend itself against hostile societies. Effectual use of the combined forces of the community, presupposes subordination to the government and to the agencies appointed for carrying on war; and it may rationally be held that the open avowal of convictions which, if general, would paralyse the executive agency, ought not to be allowed. And here, indeed, we see once more how that militant *régime* which in various other ways suppresses or suspends the rights of individuals, interferes even with the right of free belief.

Only, indeed, as we pass gradually from that system of *status* which chronic hostilities produce, to that system of contract which replaces it as fast as industrial life becomes predominant, does the assertion of rights in general become more and more practicable and appropriate; and only in

the course of this change does the change from the alleged duty of accepting beliefs prescribed by authority, to the asserted right of individually choosing beliefs, naturally go on.

Subject to this interpretation, we see that the right of free belief has had a history parallel to the histories of other rights. This corollary from the law of equal freedom, at first ignored and then gradually more and more recognized, has finally come to be fully established in law.

## CHAPTER XVIII.

### THE RIGHTS OF FREE SPEECH AND PUBLICATION.

§ 76. The subject matter of this chapter is scarcely separable from that of the last. As belief, considered in itself, does not admit of being controlled by external power—as it is only the profession of belief which can be taken cognizance of by authority and permitted or prevented, it follows that the assertion of the right to freedom of belief implies the right to freedom of speech. Further, it implies the right to use speech for the propagation of belief; seeing that each of the propositions constituting an argument or arguments, used to support or enforce a belief, being itself a belief, the right to express it is included with the right to express the belief to be justified.

Of course the one right like the other is an immediate corollary from the law of equal freedom. By using speech, either for the expression of a belief or for the maintenance of a belief, no one prevents any other person from doing the like: unless, indeed, by vociferation or persistence he prevents another from being heard, in which case he is habitually recognized as unfair, that is, as breaking the law of equal freedom.

Evidently with change of terms, the same things may be said concerning the right of publication—"the liberty of unlicensed printing." In respect of their ethical relations, there exists no essential difference between the act of

speaking and the act of symbolizing speech by writing, or the act of multiplying copies of that which has been written.

One qualification, implied by preceding chapters, has to be named. Freedom of speech, spoken, written, or printed, does not include freedom to use speech for the utterance of calumny or the propagation of it; nor does it include freedom to use speech for prompting the commission of injuries to others. Both these employments of it are obviously excluded by those limits to individual liberty which have been set forth.

§ 77. Though in our time and country defence of these rights seems needless, it may be well to deal with such arguments against them as were urged among ourselves in comparatively recent times and are still urged in other countries.

It is said that a government ought to guarantee its subjects "security and a sense of security;" whence it is inferred that magistrates ought to keep ears open to the declamations of popular orators, and stop such as are calculated to create alarm. This inference, however, is met by the difficulty that since every considerable change, political or religious, is, when first urged, dreaded by the majority, and thus diminishes their sense of security, the advocacy of it should be prevented. There were multitudes of people who suffered chronic alarm during the Reform Bill agitation; and had the prevention of that alarm been imperative, the implication is that the agitation ought to have been suppressed. So, too, great numbers who were moved by the terrible forecasts of *The Standard* and the melancholy wailings of *The Herald*, would fain have put down the free-trade propaganda; and had it been requisite to maintain their sense of security, they should have had their way. And similarly with removal of Catholic disabilities. Prophecies were rife of the return of papal persecutions with all their horrors. Hence the speaking

and writing which brought about the change ought to have been forbidden, had the maintenance of a sense of security been held imperative.

Evidently such proposals to limit the right of free speech, political or religious, can be defended only by making the tacit assumption that whatever political or religious beliefs are at the time established, are wholly true ; and since this tacit assumption has throughout the past proved to be habitually erroneous, regard for experience may reasonably prevent us from assuming that the current beliefs are wholly true. We must recognize free-speech as still being the agency by which error is to be dissipated, and cannot without papal assumption interdict it.

Beyond the need, in past times unquestioned, for restraints on the public utterance of political and religious beliefs at variance with those established, there is the need, still by most people thought unquestionable, for restraining utterances which pass the limits of what is thought decency, or are calculated to encourage sexual immorality. The question is a difficult one—appears, indeed, to admit of no satisfactory solution. On the one hand, it seems beyond doubt that unlimited license of speech on these matters, may have the effect of undermining ideas, sentiments, and institutions which are socially beneficial ; for, whatever are the defects in the existing domestic *régime*, we have strong reasons for believing that it is in most respects good. If this be so, it may be argued that publication of doctrines, which tend to discredit this *régime*, is undoubtedly injurious and should be prevented. Yet, on the other hand, we must remember that in like manner it was, in the past, thought absolutely certain that the propagators of heretical opinions ought to be punished, lest they should mislead and eternally damn those who heard them ; and this fact suggests that there may be danger in assuming too confidently that our opinions concerning the relations of the sexes are just what they should be. In all times and



places people have been positive that their ideas and feelings on these matters, as well as on religious matters, have been right; and yet, assuming that we are right, they must have been wrong. Though here in England we think it clear that the child-marriages in India are vicious, yet most Hindus do not think so; and though among ourselves the majority do not see anything wrong in mercantile marriages, yet there are many who do. In parts of Africa not only is polygamy regarded as proper but monogamy is condemned, even by women; while in Thibet polyandry is not only held right by the inhabitants but is thought by travellers to be the best arrangement practicable in their poverty-stricken country. In presence of the multitudinous differences of opinion found even among civilized peoples, it seems scarcely reasonable to take for granted that we alone are above criticism in our conceptions and practices; and unless we do this, restraints on free-speech concerning the relations of the sexes may possibly be hindrances to something better and higher.

Doubtless there must be evils attendant on free speech in this sphere as in the political and religious spheres; but the conclusion above implied is that the evils must be tolerated in consideration of the possible benefits. Further, it should be borne in mind that such evils will always be kept in check by public opinion. The dread of saying or writing that which will bring social ostracism, proves in many cases far more effectual than does legal restriction.

§ 78. Though it is superfluous to point out that, in common with other rights, the rights of free speech and publication, in early times and most places either denied or not overtly recognized, have gradually established themselves; yet some evidence may fitly be cited with a view to emphasizing this truth.

Various of the facts instanced in the last chapter might be instanced afresh here; since suppression of beliefs has, by

implication, been suppression of free speech. That the anger of the Jewish priests against Jesus Christ for teaching things at variance with their creed led to his crucifixion; that Paul, at first a persecutor of Christians, was himself presently persecuted for persuading men to be Christians; and that by sundry Roman emperors preachers of Christianity were martyred; are familiar examples of the denial of free speech in early times. So, too, after the Christian creed became established, the punishment of some who taught the non-divinity of Christ, of others who publicly asserted predestination, and of others who spread the doctrine of two supreme principles of good and evil, as well as the persecutions of Huss and Luther, exemplify in ways almost equally familiar the denial of the right to utter opinions contrary to those which are authorized. And so, in our country, has it been from the time when Henry IV. enacted severe penalties on teachers of heresy, down to the 17th century when the non-conforming clergy were punished for teaching any other than the church doctrine and Bunyan was imprisoned for open-air preaching—down, further, to the last trial for propagating atheism, which is within our own recollection. But gradually, during recent centuries, the right of free speech on religious matters, more and more asserted, has been more and more admitted; until now there is no restraint on the public utterance of any religious opinion, unless the utterance is gratuitously insulting in manner or form.

By a parallel progress there has been established that right of free speech on political questions, which in early days was denied. Among the Athenians in Solon's time, death was inflicted for opposition to a certain established policy; and among the Romans the utterance of proscribed opinions was punished as treason. So, too, in England centuries ago, political criticism, even of a moderate kind, brought severe penalties. Later times have witnessed, now greater liberty of speech and now greater control: the noticeable fact

being that during the war-period brought on by the French revolution, there was a retrograde movement in respect of this right as in respect of other rights. A judge, in 1808, declared that "it was not to be permitted to any man to make the people dissatisfied with the Government under which he lives." But with the commencement of the long peace there began a decrease of the restraints on political speech, as of other restraints on freedom. Though Sir F. Burdett was imprisoned for condemning the inhuman acts of the troops, and Leigh Hunt for commenting on excessive flogging in the army, since that time there have practically disappeared all impediments to the public expression of political ideas. So long as he does not suggest the commission of crimes, each citizen is free to say what he pleases about any or all of our institutions: even to the advocacy of a form of government utterly different from that which exists, or the condemnation of all government.

Of course, with increasing recognition of the right of free speech there has gone increasing recognition of the right of free publication. Plato taught that censors were needful to prevent the diffusion of unauthorized doctrines. With the growth of ecclesiastical power there came the suppression of writings considered heretical. In our own country under Queen Elizabeth, books had to be officially authorized; and even the Long Parliament re-enforced that system of licensing against which Milton made his celebrated protest. But for these two centuries there has been no official censorship, save of public plays. And though many arrangements for shackling the press have since been made, yet these have gradually fallen into disuse or been repealed.

§ 79. But in this case, as in cases already noticed, it follows from the precedence which the preservation of the society has over the claims of the individual, that such restraints may rightly be put on free speech and free publication as are needful during war to prevent the giving of

advantage to the enemy. If, as we have seen, there is ethical justification for subordinating the more important rights of the citizen to the extent requisite for successfully carrying on national defence, it of course follows that these less important rights may also be subordinated.

And here, indeed, we see again how direct is the connexion between international hostilities and the repression of individual freedom. For it is manifest that throughout civilization the repression of freedom of speech and freedom of publication, has been rigorous in proportion as militancy has been predominant; and that at the present time, in such contrasts as that between Russia and England, we still observe the relation.

After recognizing the justifiable limitations of these rights, that which it concerns us to note is that they, in common with the others severally deduced from the law of equal freedom, have come to be recognized in law as fast as society has assumed a higher form.

## CHAPTER XIX.

### A RETROSPECT WITH AN ADDITION.

§ 80. Where men's natures and their institutions are incongruous, there exists a force tending to produce change. Either the institutions will remould the nature or the nature will remould the institutions, or partly the one and partly the other; and eventually a more stable state will establish itself.

In our own case the action and reaction between our social arrangements and our characters, has produced a curious result. Compromise being an essential trait of the one has become agreeable to the other; so that it is not only tolerated but preferred. There has grown up a distrust of definite conclusions, and a positive aversion to system. Naturally, statesmen and citizens who, on the one hand, unite in declaring the sovereignty of the people, and who, on the other hand, dutifully write and complacently read royal speeches which address Lords and Commons as servants, and speak of the people as "my subjects," must be impatient of any demand for consistency in their political ideas. If, while they assert the right of private judgment in religious matters, they tacitly authorize parliament to maintain a creed for them, they must be restive when asked how they reconcile their theory with their practice. Hence, in presence of the many instances in which they have to accept contradictory doctrines, they become averse

to exact thinking, resent all attempts to tie them down to precise propositions, and shrink from an abstract principle with as much alarm as a servant girl shrinks from something she takes for a ghost.

An ingrained way of thinking and feeling thus generated by social conditions, is not to be changed by any amount of reasoning. Beliefs at variance with it cannot gain much acceptance. Readers in whom the separate arguments contained in foregoing chapters have failed to produce changes of opinions, will not have their opinions changed by bringing together these arguments and showing that they converge to the same conclusion. Still, before proceeding, it will be as well to show how strong are the united proofs of the propositions from which inferences are presently to be drawn.

§ 81. We have no ethics of nebular condensation, or of sidereal movement, or of planetary evolution: the conception is not relevant to inorganic actions. Nor, when we turn to organized things, do we find that it has any relation to the phenomena of plant-life: though we ascribe to plants superiorities and inferiorities, leading to successes and failures in the struggle for existence, we do not associate with them praise and blame. It is only with the rise of sentiency in the animal world, that the subject matter of ethics originates. Hence ethics, pre-supposing animal life, and gaining an appreciable meaning as animal life assumes complex forms, must, in its ultimate nature, be expressible in terms of animal life. It is concerned with certain traits in the conduct of life, considered as good or bad respectively; and it cannot pass judgments on these traits in the conduct of life while ignoring the essential phenomena of life.

In the chapter on "Animal Ethics" this connexion was shown under its concrete form. We saw that, limiting our attention to any one species, the continuance of which is

held to be desirable, then, relatively to that species, the acts which subserve the maintenance of the individual and the preservation of the race, are classed by us as right and regarded with a certain approbation; while we have reprobation for acts having contrary tendencies. In the next chapter, treating of "Sub-human Justice," we saw that, for achievement of the assumed desirable end, a condition precedent is that each individual shall receive or suffer the good or evil results of its own nature and consequent actions. We saw, also, that throughout the lower animal world, where there exists no power by which this condition precedent can be traversed, it eventuates in survival of the fittest. And we further saw that, since this connexion between conduct and consequence is held to be just, it follows that throughout the animal kingdom what we call justice, is the ethical aspect of this biological law in virtue of which life in general has been maintained and has evolved into higher forms; and which therefore possesses the highest possible authority.

Along with the establishment of gregarious habits there arises a secondary law. When a number of individuals live in such proximity that they are severally apt to impede one another's actions, and so to prevent one another from achieving desired results; then, to avoid antagonism and consequent dispersion, their actions have to be mutually restrained: each must carry on its actions subject to the limitation that it shall not interfere with the like actions of others more than its own actions are interfered with. And we saw that among various gregarious creatures considerable observance of such restraints is displayed.

Finally, in the chapter on "Human Justice," it was shown that among men, the highest gregarious creatures, this secondary law, prefigured in a vague way among lower gregarious creatures, comes to have more pronounced, more definite, and more complex applications. Under the con-

ditions imposed by social life, the primary principle of justice, when asserted for each individual, itself originates the secondary or limiting principle by asserting it for all other individuals; and thus the mutual restrictions which simultaneous carrying on of their actions necessitate form a necessary element of justice in the associated state.

§ 82. Adaptation, either by the direct or by the indirect process, or by both, holds of cerebral structures as of the structures composing the rest of the body; and mental functions, like bodily functions, tend ever to become adjusted to the requirements. A feeling which prompts the maintenance of freedom of action is shown by all creatures, and is marked in creatures of high organization; and these last also show some amount of the feeling which responds to the requirement that each shall act within the limits imposed by the actions of others.

Along with greater power of "looking before and after," there exist in mankind higher manifestations of both of these traits—clear where the society has long been peaceful and obscured where it has been habitually warlike. Where the habits of life have not entailed a chronic conflict between the ethics of amity and the ethics of enmity, a distinct consciousness of justice is shown; alike in respect of personal claims and the correlative claims of others. But where men's rights to life, liberty, and property, are constantly subordinated by forcibly organizing them into armies for more effectual fighting, and where by implication they are accustomed to trample on the rights of men who do not inhabit the same territory, the emotions and ideas corresponding to the principles of justice, egoistic and altruistic, are habitually repressed.

But subject to this qualification, associated life, which in a predominant degree fosters the sympathies, and while it gives play to the sentiment of egoistic justice exercises also the sentiment of altruistic justice, generates correla-



tive ideas ; so that in course of time, along with a moral consciousness of the claims of self and others, there comes an intellectual perception of them. There finally arise intuitions corresponding to those requirements which must be fulfilled before social activities can be harmoniously carried on ; and these intuitions receive their most abstract expression in the assertion that the liberty of each is limited only by the like liberties of all.

Hence we get a double deductive origin for this fundamental principle. It is primarily deducible from the conditions precedent to complete life in the associated state ; and it is secondarily deducible from those forms of consciousness created by the moulding of human nature into conformity with these conditions.

§ 83. The conclusions thus reached by deduction agree with the conclusions which induction has led us to. Accumulated experiences have prompted men to establish laws harmonizing with the various corollaries which follow from the principle of equal freedom.

Though disregarded during war, life during peace has acquired sacredness ; and all interferences with physical integrity, however trivial, have come to be regarded as offences. The slavery which in early stages almost everywhere existed, has, with the advance of civilization, been gradually mitigated ; and, in the most advanced societies, restraints on motion and locomotion have disappeared. Men's equal claims to unimpeded use of light and air, originally ignored, are now legally enforced ; and, though during great predominance of militant activity the ownership of land by the community lapsed into ownership by chiefs and kings, yet now, with the development of industrialism, the truth that the private ownership of land is subject to the supreme ownership of the community, and that therefore each citizen has a latent claim to participate in the use of the Earth, has come to be recognized. The

right of property, invaded with small scruple in early times, when the rights to life and liberty were little regarded, has been better and better maintained as societies have advanced ; and while law has with increasing efficiency maintained the right to material property, it has more and more in modern times recognized and maintained the rights to incorporeal property : patent laws, copyright laws, libel laws, have been progressively made more effectual.

Thus while, in uncivilized societies and in early stages of civilized societies, the individual is left to defend his own life, liberty, and property as best he may, in later stages the community, through its government, more and more undertakes to defend them for him. Consequently, unless it be asserted that primitive disorder was better than is the comparative order now maintained, it must be admitted that experience of results justifies the assertion of these chief rights, and endorses the arguments by which they are deduced.

§ 84. Of kindred nature and significance is an accompanying endorsement. While the community in its corporate capacity has gradually assumed the duty of guarding the rights of each man from aggressions by other men, it has gradually ceased from invading his rights itself as it once did.

Among uncivilized peoples, and among the civilized in early times, the right of bequest has been either denied (here by custom and there by law) or else greatly restricted ; but with the growth of industrialism and its appropriate social forms, restrictions on the right of bequest have diminished, and in the most industrially organized nations have almost disappeared. In rude societies the ruler habitually interferes with the right of free exchange—monopolizing, restraining, interdicting ; but in advanced societies internal exchanges are much less interfered with, and in our own society very little interference even

with external exchanges remains. During many centuries throughout Europe, the State superintended industry, and men were told what processes they must adopt and what things they must produce; but now, save by regulations for the protection of employés, their rights to manufacture what they please and how they please are uninterfered with. Originally, creeds and observances were settled by authority; but the dictations have slowly diminished, and at present, in the most advanced societies, every one may believe or not believe, worship or not worship, as he likes. And so, too, is it with the rights of free speech and publication: originally denied and the assumption of them punished, they have gradually acquired legal recognition.

Simultaneously, governments have also ceased to interfere with other classes of private actions. Once upon a time they prescribed kinds and qualities of food and numbers of meals. To those below specified ranks they forbade certain colours for dresses, the wearing of furs, the use of embroideries and of lace; while the weapons they might wear or use were named. Those who might, and those who might not, have silver plate were specified; as also those who might wear long hair. Nor were amusements left uncontrolled. Games of sundry kinds were in some cases prohibited, and in other cases exercises were prescribed. But in modern times these interferences with individual freedom have ceased: men's rights to choose their own usages have come to be tacitly admitted.

Here again, then, unless it be maintained that sumptuary laws and the like should be re-enacted, and that freedom of bequest, freedom of exchange, freedom of industry, freedom of belief, and freedom of speech, might with advantage be suppressed; it must be admitted that the inferences drawn from the formula of justice have been progressively justified by the discovery that disregard of them is mischievous.

§ 85. Yet another series of inductive verifications, not

hitherto named, has to be set down—the verifications furnished by political economy.

This teaches that meddlings with commerce by prohibitions and bounties are detrimental; and the law of equal freedom excludes them as wrong. That speculators should be allowed to operate on the food-markets as they see well is an inference drawn by political economy; and by the fundamental principle of equity they are justified in doing this. Penalties upon usury are proved by political economists to be injurious; and by the law of equal freedom they are negatived as involving infringements of rights. The reasonings of political economists show that machinery is beneficial to the people at large, instead of hurtful to them; and in unison with their conclusions the law of equal freedom forbids attempts to restrict its use. While one of the settled conclusions of political economy is that wages and prices cannot be artificially regulated with advantage, it is also an obvious inference from the law of equal freedom that regulation of them is not morally permissible. On other questions, such as the hurtfulness of tamperings with banking, the futility of endeavours to benefit one occupation at the expense of others, political economy reaches conclusions which ethics independently deduces.

What do these various instances unite in showing? Briefly, that not only *harmony* of co-operation in the social state, but also *efficiency* of co-operation, is best achieved by conformity to the law of equal freedom.

§ 86. Two deductive arguments and three inductive arguments thus converge to the same conclusion. By inference from the laws of life as carried on under social conditions, and by inference from the dicta of that moral consciousness generated by the continuous discipline of social life, we are led directly to recognize the law of equal freedom as the supreme moral law. And we are indirectly led to such recognition of it by generalizing the experiences

of mankind as registered in progressive legislation; since by it we are shown that during civilization there has been a gradual increase in the governmental maintenance of the rights of individuals, and that simultaneously there has been a gradual decrease in the governmental trespasses on such rights. And then this agreement is reinforced by the proofs that what is theoretically equitable is economically expedient.

I am by no means certain that acceptance of this quintuply-rooted truth will be rendered any the more likely by thus showing that the *a posteriori* supports of it furnished by history are joined with the *a priori* supports furnished by biology and psychology. If there are *a priori* thinkers who obstinately disregard experiences at variance with their judgments; there are also *a posteriori* thinkers who obstinately deny all value to intuitive beliefs. They have faith in the cognitions resulting from the accumulated experiences of the individual, but no faith in the cognitions resulting from the accumulated experiences of the race. Here, however, we avoid both kinds of bigotry. The agreement of deduction with induction yields the strongest proof; and where, as in this case, we have plurality of both deductions and inductions, there is reached as great a certainty as can be imagined.

## CHAPTER XX.

### THE RIGHTS OF WOMEN.

§ 87. When in certain preceding chapters the fundamental principle of justice was discussed, a relevant question which might have been raised, I decided to postpone, because I thought discussion of it would appropriately introduce the subject-matter of this chapter.

“Why,” it might have been asked, “should not men have rights proportionate to their faculties? Why should not the sphere of action of the superior individual be greater than that of the inferior individual? Surely, as a big man occupies more space than a little man, so too does he need larger supplies of the necessaries of life; and so, too, does he need greater scope for the use of his powers. Hence it is unreasonable that the activities of great and small, strong and weak, high and low, should be severally restrained within limits too narrow for these and too wide for those.”

The first reply is that the metaphors which we are obliged to use are misleading if interpreted literally. Though, as above, and as in previous chapters, men's equal liberties are figured as spaces surrounding each, which mutually limit another, yet they cannot be truly represented in so simple a manner. The inferior man, who claims as great a right to bodily integrity as the

superior man, does not by doing this trespass on the bodily integrity of the superior man. If he asserts like freedom with him to move about and to work, he does not thereby prevent him from moving about and working. And if he retains as his own whatever his activities have gained for him, he in no degree prevents the superior man from retaining the produce of his activities, which, by implication, are greater in amount.

The second reply is that denying to inferior faculty a sphere of action equal to that which superior faculty has, is to add an artificial hardship to a natural hardship. To be born with a dwarfed or deformed body, or imperfect senses, or a feeble constitution, or a low intelligence, or ill-balanced emotions, is in itself a pitiable fate. Could we charge Nature with injustice, we might fitly say it is unjust that some should have natural endowments so much lower than others have, and that they should thus be in large measure incapacitated for the battle of life. And if so, what shall we say to the proposal that, being already disadvantaged by having smaller powers, they should be further disadvantaged by having narrower spheres for the exercise of those powers? Sympathy might contrariwise urge that, by way of compensation for inherited disabilities, they should have extended opportunities. But, evidently, the least that can be done is to allow them as much freedom as others to make the best of themselves.

A third reply is that, were it equitable to make men's liberties proportionate to their abilities, it would be impracticable; since we have no means by which either the one or the other can be measured. In the great mass of cases there is no difficulty in carrying out the principle of equality. If, (previous aggression being supposed absent,) A kills B, or knocks him down, or locks him up, it is clear that the liberties of action assumed by the two are unlike; or if C, having bought goods of D, does not pay the price agreed upon, it is clear

that the contract having been fulfilled on one side and not on the other, the degrees of freedom used are not the same. But if liberties are to be proportioned to abilities, then the implication is that the relative amounts of each faculty, bodily and mental, must be ascertained; and the further implication is that the several kinds of freedom needed must be meted out. Neither of these things can be done; and therefore, apart from other reasons, the regard for practicability would require us to treat men's freedoms as equal, irrespective of their endowments.

§ 88. With change of terms these arguments are applicable to the relation between the rights of men and the rights of women. This is not the place for comparing in detail the capacities of men and women. It suffices for present purposes to recognize the unquestionable fact that some women are physically stronger than some men, and that some women have higher mental endowments than some men—higher, indeed, than the great majority of men. Hence it results, as above, that were liberties to be adjusted to abilities, the adjustment, even could we make it, would have to be made irrespective of sex.

The difficulty reappears under another form, if we set out with the proposition that just as, disregarding exceptions, the average physical powers of women are less than the average physical powers of men, so too are their average mental powers. For we could not conform our plans to this truth: it would be impossible to ascertain the ratio between the two averages; and it would be impossible rightly to proportion the spheres of activity to them.

But, as above argued, generosity prompting equalization would direct that were any difference to be made it ought to be that, by way of compensation, smaller faculties should have greater facilities. Generosity aside however, justice



demands the women, if they are not artificially advantaged, must not, at any rate, be artificially disadvantaged.

Hence, if men and women are severally regarded as independent members of a society, each one of whom has to do the best for himself or herself, it results that no restraints can equitably be placed upon women in respect of the occupations, professions, or other careers which they may wish to adopt. They must have like freedom to prepare themselves, and like freedom to profit by such information and skill as they acquire.

But more involved questions arise when we take into account the relations of women to men in marriage, and the relations of women to men in the State.

§ 89. Of those equal liberties with men which women should have before marriage, we must say that in equity they retain after marriage all those which are not necessarily interfered with by the marital relation—the rights to physical integrity, the rights to ownership of property earned and property given or bequeathed, the rights to free belief and free speech, &c. Their claims can properly be qualified only in so far as they are traversed by the understood or expressed terms of the contract voluntarily entered into; and as these terms vary in different places and times, the resulting qualifications must vary. Here, in default of definite measures, we must be content with approximations.

In respect of property, for instance, it may be reasonably held that where the husband is exclusively responsible for maintenance of the family, property which would otherwise belong to the wife may equitably be assigned to him—the use, at least, if not the possession; since, if not, it becomes possible for the wife to use her property or its proceeds for her personal benefit only, and refuse to contribute towards the expenses of the joint household. Only if she is equally responsible with him for family-maintenance, does it seem right that she should have equally unqualified ownership of

property. Yet, on the other hand, we cannot say that the responsibilities must be entirely reciprocal. For though, rights of ownership being supposed equal, it would at first sight appear that the one is as much bound as the other to maintain the two and their children; yet this is negatived by the existence on the one side of onerous functions which do not exist on the other, and which largely incapacitate for active life. Nothing more than a compromise, varying according to the circumstances, seems here possible. The discharge of domestic and maternal duties by the wife may ordinarily be held a fair equivalent for the earning of an income by the husband.

Respecting powers of control over one another's actions and over the household, the conclusions to be drawn are still more indefinite. The relative positions of the two as contributors of monies and services have to be taken into account, as well as their respective natures; and these factors in the problem are variable. When there arise conflicting wills of which both cannot be fulfilled, but one of which must issue in action, the law of equal freedom cannot, in each particular case, be conformed to; but can be conformed to only in the average of cases. Whether it should be conformed to in the average of cases must depend on circumstances. We may, however, say that since, speaking generally, man is more judicially-minded than woman, the balance of authority should incline to the side of the husband; especially as he usually provides the means which make possible the fulfilment of the will of either or the wills of both. But in respect of this relation reasoning goes for little: the characters of those concerned determine the form it takes. The only effect which ethical considerations are likely to have is that of moderating the use of such supremacy as eventually arises.

The remaining question, equally involved or more involved, concerns the possession and management of children. Decisions about management have to be made

daily; and decisions about possession must be made in all cases of separation. What are the relative claims of husband and wife in such cases? On the one hand, it may be said of the direct physical claims, otherwise equal, that that of the mother is rendered far greater by the continued nutrition before and after birth, than that of the father. On the other hand, it may be urged on the part of the father, that in the normal order the food by which the mother has been supported and the nutrition of the infant made possible, has been provided by his labour. Whether this counter-claim be or be not equivalent, it must be admitted that the claim of the mother cannot well be less than that of the father. Of the compromise respecting management which justice thus appears to dictate, we may perhaps reasonably say that the power of the mother may fitly predominate during the earlier part of a child's life, and that of the father during the later part. The maternal nature is better adjusted to the needs of infancy and early childhood than the paternal nature; while for fitting children, and especially boys, for the battle of life, the father, who has had most experience of it, may be considered the best guide. But it seems alike inequitable and inexpedient that the power of either should at any time be exercised to the exclusion of the power of the other. Of the respective claims to possession where separation takes place, some guidance is again furnished by consideration of children's welfare; an equal division, where it is possible, being so made that the younger remain with the mother and the elder go with the father. Evidently, however, nothing is here possible but compromise based on consideration of the special circumstances.

Concerning the claims of women, as domestically associated with men, I may add that here in England, and still more in America, the need for urging them is not pressing. In some cases, indeed, there is a converse need. But there are other civilized societies in which

their claims are very inadequately recognized: instance Germany.\*

§ 90. As in other cases, let us look now at the stages through which usage and law have grown into conformity with ethics.

Save among the few primitive peoples who do not preach the virtues called Christian but merely practise them—save among those absolutely peaceful tribes here and there found who, while admirable in their general conduct, treat their women with equity as well as kindness, uncivilized tribes at large have no more conception of the rights of women than of the rights of brutes. Such regard for women's claims as enables mothers to survive and rear offspring, of course exists; since tribes in which it is less than this disappear. But, frequently, the regard is not greater than is needful to prevent extinction.

When we read of a Fijian that he might kill and eat his wife if he pleased; of the Fuegians and wilder Australians that they sacrificed their old women for food; and of the many peoples among whom women are killed to accompany their dead husbands to the other world; we see that they are commonly denied even the first of all rights. The facts that in these low stages women, leading the lives of slaves, are also sold as slaves, and, when married, are either stolen or bought, prove that no liberties are recognized as belonging to them. And on remembering that where wives are habitually considered as property, the implication is that independent ownership of property by them can scarcely exist, we are shown that this further fundamental right is at the outset but very vaguely recognized. Though

\* With other reasons prompting this remark, is joined the remembrance of a conversation between two Germans in which, with contemptuous laughter, they were describing how, in England, they had often seen on a Sunday or other holiday, an artizan relieving his wife by carrying the child they had with them. Their sneers produced in me a feeling of shame—but not for the artizan.

the matter is in many cases complicated and qualified by the system of descent in the female line, it is certain that, speaking generally, in rude societies where among men aggression is restrained only by fear of vengeance, the claims of women are habitually disregarded.

To trace up in this place the rising *status* of women is out of the question. Passing over those ancient societies in which descent in the female line gave to women a relatively high position, as it did among the Egyptians, it will suffice to note that in societies which have arisen by aggregation of patriarchal groups, the rights of women, at first scarcely more recognized than among savages, have, during these two thousand years, gradually established themselves. Limiting our attention to the Aryans who overspread Europe, we see that save where, as indicated by Tacitus, women, by sharing in the dangers of war, gained a better position (a connexion of facts which we find among various peoples), they were absolutely subordinated. The primitive Germans bought their wives; and husbands might sell and even kill them. In the early Teutonic society, as in the early Roman society, there was perpetual tutelage of women, and consequent incapacity for independent ownership of property. A like state of things existed here in the old English period. Brides were purchased: their wills counting for nothing in the bargains. Mitigations gradually came. Among the Romans the requirement that a bride should be transferred to the bridegroom by legal conveyance, ceased to be observed. The life and death power came to an end: though sometimes reappearing, as when the early Angevin ruler, Fulc the Black, burnt his wife. Generalizing the facts we see that as life became less exclusively militant, the subjection of women to men became less extreme. How that decline of the system of *status* and rise of the system of contract, which characterizes industrialism, ameliorated, in early days, the position of women, is curiously shown by the occurrence of their

signatures in the documents of guilds, while yet their position outside of the guilds remained much as before. This connexion has continued to be a general one. Both in England and in America, where the industrial type of organization is most developed, the legal *status* of women is higher than on the continent, where militancy is more pronounced. Add to which that among ourselves, along with the modern growth of free institutions characterizing predominant industrialism, the positions of women have been with increasing rapidity approximated to those of men.

Here again, then, ethical deductions harmonize with historical inductions. As in preceding chapters we saw that each of those corollaries from the law of equal freedom which we call a right, has been better established as fast as a higher social life has been reached; so here, we see that the general body of such rights, originally denied entirely to women, has, in the course of this same progress, been acquired by them.

§ 91. There has still to be considered from the ethical point of view, the political position of women as compared with the political position of men; but until the last of these has been dealt with, we cannot in a complete way deal with the first. When, presently, we enter on the consideration of what are commonly called "political rights," we shall find need for changing, in essential ways, the current conceptions of them; and until this has been done the political rights of women cannot be adequately treated of. There is, however, one aspect of the matter which we may deal with now no less conveniently than hereafter.

Are the political rights of women the same as those of men? The assumption that they are the same is now widely made. Along with that identity of rights above set forth as arising from the human nature common to the two sexes, there is supposed to go an identity of rights in respect to the direction of public affairs. At first sight

it seems that the two properly go together; but consideration shows that this is not so. Citizenship does not include only the giving of votes, joined now and again with the fulfilment of representative functions. It includes also certain serious responsibilities. But if so, there cannot be equality of citizenship unless along with the share of good there goes the share of evil. To call that equality of citizenship under which some have their powers *gratis*, while others pay for their powers by undertaking risks, is absurd. Now men, whatever political powers they may in any case possess, are at the same time severally liable to the loss of liberty, to the privation, and occasionally to the death, consequent on having to defend the country; and if women, along with the same political powers, have not the same liabilities, their position is not one of equality but one of supremacy.

Unless, therefore, women furnish contingents to the army and navy such as men furnish, it is manifest that, ethically considered, the question of the equal "political rights," so-called, of women, cannot be entertained until there is reached a state of permanent peace. Then only will it be possible (whether desirable or not) to make the political positions of men and women the same.

It should be added that of course this reason does not negative the claims of women to equal shares in local governments and administrations. If it is contended that these should be withheld, it must be for reasons for other kinds.

## CHAPTER XXI.

### THE RIGHTS OF CHILDREN.

§ 92. The reader who remembers that at the outset we recognized a fundamental distinction between the ethics of the family and the ethics of the State, and saw that welfare of the species requires the maintenance of two antagonist principles in them respectively, will infer that the rights of children must have a nature quite different from that of the rights of adults. He will also infer that since children are gradually transformed into adults, there must be a continually changing relation between the two kinds of rights, and need for a varying compromise.

Preservation of the race implies both self-sustentation and sustentation of offspring. If, assuming preservation of the race to be a good end, we infer that it is right to achieve these two sustentations; and if, therefore, the conditions precedent, without which they cannot be achieved, become what we call rights; it results that children have rights (or rather, for distinction sake, let us say rightful claims) to those materials and aids needful for life and growth, which, by implication, it is the duty of parents to supply. Whereas during mature life, the rights are so many special forms of that general freedom of action which is requisite for the procuring of food, clothing, shelter, &c.; during immature life the rightful claims are to the food, clothing, shelter, &c., themselves, and not to those forms of



freedom which make possible the obtainment of them. While yet its faculties are undeveloped the child cannot occupy various parts of the sphere of activity occupied by the adult. During this stage of inability, such needful benefits as are naturally to be gained only within these unusable regions of activity, must come to it gratis. And, deduced as its claims to them are from the same primary requirement (preservation of the species), they must be considered as equally valid with the claims which the adult derives from the law of equal freedom.

I use the foregoing verbal distinction between the rights of adults and the rightful claims of children, because, in the general consciousness, rights are to so large an extent associated with activities and the products of activities, that some confusion of thought arises if we ascribe them to infants and young children, who are incapable of carrying on such activities and obtaining such products.

§ 93. Still regarding preservation of the species as the ultimate end, we must infer that while in large measure children's rightful claims are to the products of activities, rather than to the spheres in which those activities are carried on, children have, at the same time, rightful claims to such parts of those spheres of activity as they can advantageously use. For if the desideratum is preservation of the species, then, to achieve it, the members of each generation have not only to be supplied by parents with such food, clothing and shelter as are requisite, but have also to receive from them such aids and opportunities as, by enabling them to exercise their faculties, shall produce in them fitness for adult life. By leading their young ones to use their limbs and senses, even inferior creatures, however unconsciously, fulfil this requirement to some extent. And if for the comparatively simple lives of birds and quadrupeds such needful preparation has to be made, still more has it to be made for the complex lives of mankind,

and still more does there follow the responsibility of providing for it and furthering it.

How far the lives of parents must, in the due discharge of these responsibilities, be subordinated to the lives of children, is a question to which no definite answer can be given. In multitudinous kinds of inferior creatures, each generation is completely sacrificed to the next: eggs having been laid the parents forthwith die. But among higher creatures, which have to give much aid to their offspring while they grow, or which rear successive broods of offspring, or both, this of course is not the case. Here the welfare of the species demands that the parents shall continue to live in full vigour, that they may adequately nurture their offspring during their periods of immaturity. This is of course especially the case with mankind; since the period over which aid has to be given to offspring is very long. Hence, in estimating the relative claims of child and parent, it is inferable that parental sacrifices must not be such as will incapacitate for the full performance of parental duties. Undue sacrifices are eventually to the disadvantage of the offspring, and, by implication, to the disadvantage of the species. To which add that, since the well-being and happiness of parents is itself an end which forms part of the general end, there is a further ethical reason why the self-subordination of parents must be kept within moderate limits.

§ 94. From the rightful claims of children on parents, we pass now to the correlative duties of children to parents. As before we must be content with a compromise which changes gradually during the progress from infancy to maturity.

Though, as we have seen, the child has a rightful claim to food, clothing, shelter, and other aids to development, yet it has not a right to that self-direction which is the normal accompaniment of self-sustentation. There are two

reasons for not admitting this right—the one that exercise of it would be mischievous to itself, and the other that it would imply an ignoring of the claim of parent on child which is the reciprocal of the claim of child on parent. The first is self-evident, and the second scarcely needs exposition. Though here there can be made no such measurement of relative claims as that which the law of equal freedom enables us to make between adults; yet, if we guide ourselves by that law as well as may be, it results that for sustentation and other aids received there should be given whatever equivalent is possible in the form of obedience and the rendering of small services.

Meanwhile, in view of the ultimate end—the welfare of the species—this reciprocal relation between mature and immature should be approximated to the relation between adults as fast as there are acquired the powers of self-sustentation and self-direction. To be fitted for independent or self-directed activities there must be practice in such activities; and to this end a gradually increased freedom. As a matter of equity, too, the same thing is implied. Where a child becomes in a considerable degree self-sustaining before the adult age is reached, there arises a just claim to a proportionate amount of freedom.

Of course, essentially at variance as are the ethics of the family and the ethics of the State, the transition from guidance by the one to guidance by the other, must ever continue to be full of perplexities. We can expect only that the compromise to be made in every case, while not forgetting the welfare of the race, shall balance fairly between the claims of the two who are immediately concerned: not sacrificing unduly either the one or the other.

§ 95. Still more in the case of children than in the case of women, do we see that progress from the lower to the higher types of society is accompanied by increasing

recognition of rightful claims. Alike in respect of life, liberty, and property, the change is traceable.

In every quarter of the globe and among all varieties of men, infanticide exists, or has existed, as a customary or legalized usage—carried sometimes to the extent of one-half of those born. Especially where, the means of subsistence being small, much increase of the tribe is disastrous, the sacrifices of the newly-born are frequent: the females being those oftenest killed because they do not promise to be of value in war. The practices of the Greeks, as well as those of the early Romans, among whom a father might kill his child at will, show that regard for the rights of the immature was no greater in law, though it may have been greater in usage. Of the early Teutons and Celts the like may be said: their habit of exposing infants, and in that way indirectly killing them, continued long after denunciation of it by the Christian church. Of course with disregard for the lives of the young has everywhere gone disregard for their liberties. The practice of selling them, either for adoption or as slaves, has prevailed widely. Not only among the Fuegians, the people of New Guinea, the New Zealanders, the Dyaks, the Malagasy, and many other uncivilized peoples, is there barter of children, but children were similarly dealt with by the forefathers of the civilized. Hebrew custom allowed sale of them, and seizure for debt. The Romans continued to sell them down to the time of the emperors, and after the establishment of Christianity. By the Celts of Gaul the like traffic was carried on until edicts of the Roman emperors suppressed it; and the Germans persisted in it till the reign of Charlemagne. Of course, if the liberties of the young were disregarded in this extreme way, they were disregarded in minor ways. No matter what age a Roman had attained, he could not marry without his father's consent. Of course, too, along with non-recognition of the rights of life and liberty went

non-recognition of the right of property. If a child could not possess himself, he clearly could not possess anything else. Hence the fact that by legal devices only did the son among the Romans acquire independent ownership of certain kinds of property, such as spoil taken in war and certain salaries for civil services.

Through what stages there has been eventually reached that large admission of children's rightful claims now seen in civilized societies, cannot here be described. Successive changes have gradually established for the young large liberties—liberties which are, indeed, in some cases, as in the United States, greater than is either just or politic. That which it concerns us here chiefly to note is that recognition of the rights of children has progressed fastest and farthest where the industrial type has most outgrown the militant type. In France, down to the time of the revolution, children continued to be treated as slaves. Sons who, even when adults, offended their fathers, could be, and sometimes were, put in prison by them; and girls were thrust into convents against their wills. Only after the revolution were the rights of sons “at last proclaimed,” and “individual liberty was no longer at the mercy of *lettres de cachet* obtained by unjust or cruel fathers.” But though among ourselves in past centuries the treatment of children was harsh, a father had not the power of imprisoning his son simply on his own motion. Though, up to recent generations, parental interdicts on the marriages of children, even when of age, were to a large extent voluntarily recognized, they were not legally enforced. And while at the present time, on the continent, parental restraints on marriage to a great extent prevail, in England marriage contrary to parental wishes, quite practicable, does not even excite much reprobation: oftentimes, indeed, no reprobation.

Thus an extreme contrast exists between those early states in which a child, like a brute, could be killed with

impunity, and modern states in which infanticide is classed as murder and artificial abortion as a crime, in which harsh treatment or inadequate sustentation by a parent is punishable, and in which, under trust, a child is capable of valid ownership.

§ 96. Yet once more, then, we meet with congruity between theory and practice—between ethical injunctions and political ameliorations—between deductions from fundamental principles and inductions from experience.

When we keep simultaneously in view the ethics of the family and the ethics of the State, and the necessity for a changing compromise between the two during the progress of children from infancy to maturity—when we pay regard at the same time to the welfare of the individual and the preservation of the race, we are led to approximately definite conclusions respecting the rightful claims of children. These conclusions, reached *a priori*, we find verified *a posteriori* by the facts of history; which show us that along with progress from lower to higher types of society there has gone increasing conformity of laws and usages to moral requirements.

## CHAPTER XXII.

### POLITICAL RIGHTS—SO-CALLED.

§ 97. Every day yields illustrations of the way in which men think only of the proximate and ignore the remote. The power of a locomotive is currently ascribed to steam. There is no adequate consciousness of the fact that the steam is simply an intermediary and not an initiator—that the initiator is the heat of the fire. It is not perceived that the steam-engine is in truth a heat-engine, differing from other heat-engines (such as those in which gas is employed) only in the instrumentality employed to transform molecular motion into molar motion.

This limitation of consciousness to direct relations and ignoring of indirect relations, habitually vitiates thinking about social affairs. The primary effect produced by one who builds a house, or makes a road, or drains a field, is that he sets men to work; and the work, more prominent in thought than the sustenance obtained by it, comes to be regarded as itself a benefit. The imagined good is not increase in the stock of commodities or appliances which subserve human wants, but the expenditure of the labour which produces them. Hence various fallacies—hence the comment on destruction by fire that it is good for trade; hence the delusion that machinery is injurious to the people. If instead of the proximate thing, labour, there were contemplated the ultimate thing, produce, such errors would be avoided. Similarly is it with currency fallacies: Coins, which may be exchanged

for all kinds of desired things, come themselves to be connected in men's minds with the idea of value, rather than the things they will purchase; which, as satisfying desires, are the truly valuable things. And then promises-to-pay, serving in place of coins, intrinsically valueless though they are, are, by daily experience of their purchasing power, so associated with the idea of value that abundance of them becomes identified in thought with wealth; and there results the belief that it only needs a profusion of bank-notes to insure national prosperity: errors which would be avoided were the reasoning carried on in terms of commodities, instead of being carried on in terms of these symbols. This usurpation of consciousness by the proximate and expulsion from it of the remote—this forgetting of the ends and erecting the means into ends, is again shown us in education. The time was when knowledge anciently acquired having ceased to be current, the learning of Latin and Greek, in which that knowledge was recorded, became indispensable as a means to acquirement of it; and it was then regarded as a means. But now, long after this ancient knowledge has been rendered accessible in our language, and now, when a vastly larger mass of knowledge has been accumulated, this learning of Latin and Greek is persisted in; and, moreover, has come to be practically regarded as the end, to the exclusion of the end as originally conceived. Young men who are tolerably familiar with these ancient languages, are supposed to be educated; though they may have acquired but little of what knowledge there is embodied in them and next to nothing of the immensely greater amount of knowledge and immensely more valuable knowledge which centuries of research have established.

§ 98. With what view is here made this general remark, thus variously illustrated? With the view of preparing the way for a further illustration which now



concerns us. Current political thought is profoundly vitiated by this mistaking of means for ends, and by this pursuit of the means to the neglect of the ends. Hence, among others, the illusions which prevail concerning "political rights."

There are no further rights, truly so called, than such as have been set forth. If, as we have seen, rights are but so many separate parts of a man's general freedom to pursue the objects of life, with such limitations only as result from the presence of other men who have similarly to pursue such objects, then, if a man's freedom is not in any way further restricted, he possesses all his rights. If the integrity of his body is in no way or degree interfered with; if there is no impediment to his motion and locomotion; if his ownership of all that he has earned or otherwise acquired is fully respected; if he may give or bequeath as he pleases, occupy himself in what way he likes, make a contract or exchange with whomsoever he wills, hold any opinions and express them in speech or print, &c., &c., nothing remains for him to demand under the name of rights, as properly understood. Any other claims he may have must be of a different kind—cannot be classed as rights. Many times and in various ways we have seen that rights, truly so called, originate from the laws of life as carried on in the associated state. The social arrangements may be such as fully recognize them, or such as ignore them in greater or smaller degrees. The social arrangements cannot create them, but can simply conform to them or not conform to them. Such parts of the social arrangements as make up what we call government, are instrumental to the maintenance of rights, here in great measure and there in small measure; but in whatever measure, they are simply instrumental, and whatever they have in them which may be called right, must be so called only in virtue of their efficiency in maintaining rights.

But because of this tendency to occupation of the mind

by the means and proportionate exclusion of the ends, it results that those governmental arrangements which conduce to maintenance of rights come to be regarded as themselves rights—nay, come to be thought of as occupying a foremost place in this category. Those shares of political power which in the more advanced nations citizens have come to possess, and which experience has shown to be good guaranties for the maintenance of life, liberty, and property, are spoken of as though the claims to them were of the same nature as the claims to life, liberty, and property themselves. Yet there is no kinship between the two. The giving of a vote, considered in itself, in no way furthers the voter's life, as does the exercise of those various liberties we properly call rights. All we can say is that the possession of the franchise by each citizen gives the citizens in general powers of checking trespasses upon their rights: powers which they may or may not use to good purpose.

The confusion between means and ends has in this case been almost inevitable. Contrasts between the states of different nations, and between the states of the same nation at different periods, have strongly impressed men with the general truth that if governmental power is in the hands of one, or in the hands of a few, it will be used to advantage the one or the few; and that the many will be correspondingly disadvantaged. That is to say, those who have not the power will be subject to greater restraints and burdens than those who have the power—will be defrauded of that liberty of each, limited only by the like liberties of all, which equity demands—will have their rights more or less seriously infringed. And as experience has shown that a wider distribution of political power is followed by decrease of these trespasses, maintenance of a popular form of government has come to be identified with the maintenance of rights, and the power of giving a vote, being instrumental to maintenance of rights, has come to be regarded as itself

a right—nay, often usurps in the general apprehension the place of the rights properly so called.

How true this is we shall learn on observing that where so-called political rights are possessed by all, rights properly so-called are often unscrupulously trampled upon. In France bureaucratic despotism under the Republic, is as great as it was under the Empire. Exactions and compulsions are no less numerous and peremptory; and, as was declared by English trade-union delegates to a congress in Paris, the invasion of citizens' liberties in France goes to an extent which "is a disgrace to, and an anomaly in, a Republican nation." Similarly in the United States. Universal suffrage does not prevent the corruptions of municipal governments, which impose heavy local taxes and do very inefficient work; does not prevent the growth of general and local organizations by which each individual is compelled to surrender his powers to wirepullers and bosses; does not prevent citizens from being coerced in their private lives by dictating what they shall not drink; does not prevent an enormous majority of consumers from being heavily taxed by a protective tariff for the benefit of a small minority of manufacturers and artizans; nay, does not even effectually preserve men from violent deaths, but, in sundry States, allows of frequent murders, checked only by law-officers, who are themselves liable to be shot in the performance of their duties. Nor indeed are the results altogether different here. Far from having effected better maintenance of men's rights properly so-called, the recent extensions of the franchise have been followed by increased trespasses on them—more numerous orders to do this and not to do that, and greater abstractions from their purses.

Thus both at home and abroad the disproof is clear. From the extreme case in which men use their so-called political rights to surrender their power of preserving their rights properly so-called, as by the *plébiscite* which elected Napoleon III., to the cases in which men let themselves be

coerced into sending their children to receive lessons in grammar and gossip about kings, often at the cost of under-feeding and weak bodies, we find none of the supposed identity. Though the so-called political rights may be used for the maintenance of liberties, they may fail to be so used, and may even be used for the establishment of tyrannies.

§ 99. Beyond that confusion of means with ends, which as we here see is a cause of this current misapprehension, there is a further cause. The conception of a right is composite, and there is a liability to mistake the presence of one of its factors for the presence of both.

As repeatedly shown, the positive element in the conception is liberty; while the negative element is the limitation implied by other's equal liberties. But the two rarely co-exist in due proportion, and in some cases do not co-exist at all. There may be liberty exercised without any restraint; resulting in perpetual aggressions and universal warfare. Conversely, there may be an equality in restraints which are carried so far as practically to destroy liberty. Citizens may be all equally coerced to the extent of enslaving them, by some power which they have set up—may, in pursuance of philanthropic or other ends, be severally deprived by it of large parts of that freedom which remains to each after duly regarding the liberties of others. Now the confusion of thought above pointed out, which leads to this classing of so-called political rights with rights properly so called, arises in part from thinking of the secondary trait, equality, while not thinking of the primary trait, liberty. The growth of the one has so generally been associated with the growth of the other, that the two have come to be thought of as necessary concomitants, and it is assumed that if the equality is obtained the liberty is ensured.

But, as above shown, this is by no means the case. Men may use their equal freedom to put themselves in bondage;

failing as they do to understand that the demand for equality taken by itself is fulfilled if the equality is in degrees of oppression borne and amounts of pain suffered. They overlook the truth that the acquirement of so-called political rights is by no means equivalent to the acquirement of rights properly so called. The one is but an instrumentality for the obtainment and maintenance of the other; and it may or may not be used to achieve those ends. The essential question is—How are rights, properly so called, to be preserved—defended against aggressors, foreign and domestic? This or that system of government is but a system of appliances. Government by representation is one of these systems of appliances; and the choosing of representatives by the votes of all citizens is one of various ways in which a representative government may be formed. Hence voting being simply a method of creating an appliance for the preservation of rights, the question is whether universal possession of votes conduces to creation of the best appliance for preservation of rights. We have seen above that it does not effectually secure this end; and we shall hereafter see that under existing conditions it is not likely to secure it.

But further discussion of this matter must be postponed. We must first deal with a more general topic—"The nature of the State."

## CHAPTER XXIII.

### THE NATURE OF THE STATE.

§ 100. The study of evolution at large makes familiar the truth that the nature of a thing is far from being fixed. Without change of identity, it may at one time have one nature and at a subsequent time quite a different nature. The contrast between a nebulous spheroid and the solid planet into which it eventually concentrates, is scarcely greater than the contrasts which everywhere present themselves.

Throughout the organic world this change of nature is practically universal. Here is a *Polype* which, after a period of sedentary life, splits up into segments which severally detach themselves as free-swimming *Medusæ*. There is a small larva of Annulose type which, moving about actively in the water for a time, fixes itself on a fish, loses its motor organs, and, feeding parasitically, grows into little more than stomach and egg-bags; and there is another which ends the wanderings of its early life by settling down on a rock and, developing into what is popularly known as an acorn-shell, gets its livelihood by sweeping into its gullet minute creatures from the surrounding water. Now the case is that of a worm-like form which, living and feeding for a long time in the water, finally, after a period of rest, bursts its pupa-shell and flies away as a gnat; and again it is that of the maggot and flesh-fly, or grub and moth, which everyday experience makes so familiar. Strangest and

most extreme of all, however, are those metamorphoses presented by some of the low aquatic *Algæ* which, moving about actively for a brief period and displaying the characters of animals, presently fix themselves, sprout out, and become plants.

Contemplation of such facts, abundant beyond enumeration and wonderfully various, warns us against the error likely to arise everywhere from the tacit assumption that the nature of a thing has been, is, and always will be, the same. We shall be led by it, contrariwise, to expect change of nature—very possibly fundamental change.

§ 101. It is tacitly assumed by nearly all that there is but one right conception of the State; whereas if, recognizing the truth that societies evolve, we learn the lessons which evolution at large teaches, we shall infer that probably the State has, in different places and times, essentially different natures. The agreement between inference and fact will soon become manifest.

Not to dwell on the earliest types, mostly characterized by descent in the female line, we may consider first the kind of group intermediate in character between the family and the society—the patriarchal group. This, as illustrated in the nomadic horde, forms a society in which the relationships of the individuals to one another and to their common head, as well as to the common property, give to the structure and functions of the incorporated whole a nature quite unlike the natures of bodies politic such as we now know. Even when such a group develops into a village-community, which, as shown in India, may have “a complete staff of functionaries, for internal government,” the generality (though not universality) of relationships among the associated persons gives to it a corporate nature markedly different from that of a society in which ties of blood have ceased to be dominant factors.

When, ascending to a higher stage of composition, we

look at communities like those of Greece, in which many clusters of relations are united, so that members of various families, *gentes* and *phratries*, are interfused without losing their identities, and in which the respective clusters have corporate interests independent of, and often antagonistic to, one another; it is undeniable that the nature of the community as a whole differs greatly from that of a modern community, in which complete amalgamation of component clusters has destroyed the primitive lines of division; and in which, at the same time, individuals, and not family-clusters, have become the political units.

Once more, on remembering the contrast between the system of *status* and the system of contract, we cannot fail to see an essential unlikeness of nature between the two kinds of body-politic formed. In sundry ancient societies "the religious and political sanction, sometimes combined and sometimes separate, determined for every one his mode of life, his creed, his duties, and his place in society, without leaving any scope for the will or reason of the individual himself." But among ourselves neither religious nor political sanction has any such power; nor has any individual his position or his career in life prescribed for him.

In presence of these facts we cannot rationally assume unity of nature in all bodies politic. So far from supposing that the general conception of the State framed by Aristotle, and derived from societies known to him, holds now and serves for present guidance, we may conclude that, in all likelihood, it is inapplicable now and would misguide us if accepted.

§ 102. Still more shall we be impressed with this truth if, instead of contrasting societies in their natures, we contrast them in their actions. Let us observe the several kinds of life they carry on.

As evolution implies gradual transition, it follows that



extremely unlike as incorporated bodies of men may become, sharp divisions are impracticable. But bearing in mind this qualification, we may say that there are three distinct purposes for which men, originally dispersed as wandering families, may associate themselves more closely. The desire for companionship is one prompter: though not universal, sociality is a general trait of human beings which leads to aggregation. A second prompter is the need for combined action against enemies, animal or human, or both—co-operation, now to resist external aggression and now to carry on external aggression. The third end to be achieved is that of facilitating sustentation by mutual aid—co-operation for the better satisfying of bodily wants and eventually of mental wants. In most cases all three ends are subserved. Not only, however, are they theoretically distinguishable, but each one of them is separately exemplified.

Of social groups which satisfy the desire for companionship only, those formed by the Esquimaux may be named. The men composing one of them are severally independent. Having no need to combine for external offence or defence, they need no leaders in war and have no political rule: the only control exercised over each being the display of opinion by his fellows. Nor is there any division of labour. Industrial co-operation is limited to that between man and wife in each family. The society has no further incorporation than that which results from the juxtaposition of its parts: there is no mutual dependence.

The second class is multitudinous. Instances of its pure form are furnished by hunting-tribes at large, the activities of which alternate between chasing animals and going to war with one another; and instances are furnished by piratical tribes and tribes which subsist by raids on their neighbours, like the Masai. In such communities division of labour, if present at all, is but rudimentary. Co-operation is for carrying on external defence and offence, and is to scarcely any extent for carrying on internal sustentation.

Though when, by conquest, there are formed larger societies, some industrial co-operation begins, and increases as the societies increase, yet this, carried on by slaves and serfs, superintended by their owners, suffices in but small measure to qualify the essential character. This character is that of a body adapted for carrying on joint action against other such bodies. The lives of the units are subordinated to the extent needful for preserving (and in some cases extending) the life of the whole. Tribes and nations in which such subordination is not maintained must, other things equal, disappear before tribes and nations in which it is maintained; and hence such subordination must, by survival of the fittest, become an established trait. Along with the unquestioned assumption appropriate to this type, that war is the business of life, there goes the belief that each individual is a vassal of the community—that, as the Greeks held, the citizen does not belong to himself, or to his family, but to his city. And naturally, along with this merging of the individual's claims in the claims of the aggregate, there goes such coercion of him by the aggregate as makes him fit for its purposes. He is subject to such teaching and discipline and control as are deemed requisite for making him a good warrior or good servant of the State.

To exemplify societies of the third class in a satisfactory way, is impracticable; because fully developed forms of them do not yet exist. Such few perfectly peaceful tribes as are found in some Papuan islands, or occupying parts of India so malarious that the warlike races around cannot live in them, are prevented by their unfit environments from developing into large industrial societies. The Bodo, the Dhimal, the Kocch and other aboriginal peoples who, living by agriculture, cluster in villages of from ten to forty houses, and shift to new tracts when they exhaust the old, show us, beyond the division of labour between the sexes, no further co-operation than rendering mutual assistance

in building their houses and clearing their plots. Speaking generally, it is only after conquest has consolidated small communities into larger ones, that there arise opportunities for the growth of mutual dependence among men who have devoted themselves to different industries. Hence throughout long periods the industrial organization, merely subservient to the militant organization, has had its essential nature disguised. Now, however, it has become manifest that the most developed modern nations are organized on a principle fundamentally unlike that on which the great mass of past nations have been organized. If, ignoring recent retrograde changes throughout Europe, we compare societies of ancient times and of the middle ages, with societies of our own times, and especially with those of England and America, we see fundamental differences. In the one case, speaking broadly, all free men are warriors and industry is left to slaves and serfs; in the other case but few free men are warriors, while the vast mass of them are occupied in production and distribution. In the one case the numerous warriors become such under compulsion; while in the other case the relatively few warriors become such under agreement. Evidently, then, the essential contrast is that in the one case the aggregate exercises great coercion over its units; while in the other case it exercises coercion which is small and tends to become less as militancy declines.

What is the meaning of this contrast reduced to its lowest terms? In either case the end to be achieved by the society in its corporate capacity, that is, by the State, is the welfare of its units; for the society having as an aggregate no sentiency, its preservation is a desideratum only as subserving individual sentiencies. How does it subserve individual sentiencies? Primarily by preventing interferences with the carrying on of individual lives. In the first stage, death and injury of its members by external foes is that which the incorporated society has

chiefly, though not wholly, to prevent; and it is ethically warranted in coercing its members to the extent required for this. In the last stage, death and injury of its members by internal trespasses is that which it has chiefly if not wholly to prevent; and the ethical warrant for coercion does not manifestly go beyond what is needful for preventing them.

§ 103. This is not the place to consider whether with this last function any further function may be joined. Limited as our subject matter is to the nature of the State, it concerns us only to observe the radical difference between these two social types. The truth to be emphasized is that a body politic which has to operate on other such bodies, and to that end must wield the combined forces of its component units, is fundamentally unlike a body politic which has to operate only on its component units. Whence it follows that political speculation which sets out with the assumption that the State has in all cases the same nature, must end in profoundly erroneous conclusions.

A further implication must be pointed out. During long past periods, as well as in our own day, and for an indefinite time to come, there have been, are, and will be, changes, progressive and retrograde, approximating societies now to one type and now to the other: these types must be both mixed and unsettled. Indefinite and variable beliefs respecting the nature of the State must therefore be expected to prevail.

## CHAPTER XXIV.

### THE CONSTITUTION OF THE STATE.

§ 104. Difference of ends usually implies difference of means. It is unlikely that a structure best fitted for one purpose will be best fitted for another purpose.

If to preserve the lives of its units, and to maintain that freedom to pursue the objects of life which is ordinarily possessed by unconquered peoples, a society has to use its corporate action chiefly for dealing with environing societies; then its organization must be such as will bring into play the effectually-combined forces of its units at specific times and places. It needs no proof that if its units are left to act without concert they will be forthwith subjugated; and it needs no proof that to produce concerted action, they must be under direction. Conformity to such direction must be insured by compulsion; the agency which compels must issue consistent orders; and to this end the orders must emanate from a single authority. Tracing up the genesis of the militant type (see *Principles of Sociology*, §§ 547-561) leads irresistibly to the conclusion that for efficient external action of a society against other societies, centralization is necessary; and that establishment of it becomes more decided the more habitual is such external action. Not only does the fighting body itself become subject to despotic rule, but also the community which supports it.

The will of the aggregate, acting through the governing power it has evolved, overrides and almost suppresses the wills of its individual members. Such rights as they are allowed they hold only on sufferance.

Hence so long as militancy predominates, the constitution of the State must be one in which the ordinary citizen is subject either to an autocrat or to an oligarchy out of which an autocrat tends continually to arise. As we saw at the outset, such subjection, with its concomitant loss of freedom and contingent loss of life, has a quasi-ethical warrant when necessitated by defensive war. The partial suspension of rights is justifiable when the object is to prevent those complete obliterations and losses of them which result from death or subjugation. Ordinarily, however, the militant type of society is developed more by offensive wars than by defensive wars; and where this is the case, the accompanying constitution of the State has no ethical warrant. However desirable it may be that the superior races should conquer and replace the inferior races, and that hence during early stages aggressive wars subserve the interests of humanity; yet, as before said, the subserving of such interests after this manner must be classed with the subserving of life at large by the struggle for existence among inferior creatures—a species of action of which ethics takes no cognisance.

Here, that which we have to note is that when the surrounding conditions are such that a society is endangered bodily by other societies, its required coercive constitution is one which, far though it may be from the absolutely right, is yet relatively right—is the least wrong which circumstances allow.

§ 105. When, ignoring intermediate forms, we pass from the militant type to the industrial type, considered as fully developed, we see that the required constitution of the State is quite different. To maintain the conditions under

which life and its activities may be carried on, is in either case the end; but to maintain these conditions against external enemies, and to maintain them against internal enemies, are two widely unlike functions calling for widely unlike appliances. Observe the contrasts.

In the one case the danger is directly that of the community as a whole and indirectly that of individuals; while in the other case it is directly that of individuals and indirectly that of the community as a whole. In the one case the danger is large, concentrated, and in its first incidence local; while in the other case the dangers are multitudinous, small, and diffused. In the one case all members of the community are simultaneously threatened with injury; while in the other case the injury threatened or experienced is now of one person now of another; and the citizen at one time aggressed upon is at another time an aggressor. And while the vast evil to be dealt with in the one case is, when warded off, no longer to be feared for some time at least; the evils to be dealt with in the other case, though small, are unceasing in their occurrence. Evidently, then, having functions so unlike, the political appliances employed should be unlike.

For preventing murders, thefts, and frauds, there does not need an army; and an army, were it used, could not deal with transgressions which are scattered everywhere. The required administration must be diffused as are the wrong-doings to be prevented or punished; and its action must be continuous instead of being occasional. But in the absence of large combined forces required for military purposes, there does not need that coercive rule by which alone combined forces can be wielded. Contrariwise, there needs a rule adapted for maintaining the rights of each citizen against others, and which is also regardful of those rights in its own dealings with citizens.

What is the appropriate constitution of the State? At first sight it seems that since every citizen (supposing him

not to be himself an aggressor) is interested in the preservation of life and property, the fulfilment of contracts, and the enforcement of all minor rights, the constitution of the State should be one in which each citizen has an equal share of power with his fellows. It appears undeniable that if, in pursuance of the law of equal freedom, men are to have equal rights secured to them, they ought to have equal powers in appointing the agency which secures such rights.

In the last chapter but one it was shown that this is not a legitimate corollary ; and various illustrations made it clear that the approved means did not achieve the desired end. Here we have to observe why they are not likely to achieve them.

§ 106. Of truths concerning human conduct none is more certain than that men will, on the average, be swayed by their interests, or rather by their apparent interests. Government is itself necessitated by the general tendency to do this ; and every Act of Parliament makes provisions to exclude its injurious effects. How universally operative and how universally recognized such tendency is, every will, every lease, every contract proves.

The working of this or that form of government is inevitably determined by this tendency. Of those who form parts of the political agency, and of those who directly or indirectly appoint them, it must be true, as of all others, that they will be swayed by their apparent interests. The laws of every country furnish proofs without end. And history having thus conclusively shown that those who have predominant power will use it to their own advantage, there has been drawn the inference that only by endowing all with power can the advantage of all be secured. But the fallacy is becoming obvious.

A generation ago, while agitations for the wider diffusion of political power were active, orators and journalists daily



denounced the "class-legislation" of the aristocracy. But there was no recognition of the truth that if, instead of the class at that time paramount, another class were made paramount, there would result a new class-legislation in place of the old. That it has resulted every day proves. If it is true that a generation ago landowners and capitalists so adjusted public arrangements as to ease themselves and to press unduly upon others, it is no less true that now artizans and labourers, through representatives who are obliged to do their bidding, are fast remoulding our social system in ways which achieve their own gain through others' loss. Year after year more public agencies are established to give what seem *gratis* benefits, at the expense of those who pay taxes, local and general; and the mass of the people, receiving the benefits and relieved from the cost of maintaining the public agencies, advocate the multiplication of them.

It is not true, then, that the possession of political power by all ensures justice to all. Contrariwise, experience makes obvious that which should have been obvious without experience, that with a universal distribution of votes the larger class will inevitably profit at the expense of the smaller class. Those higher earnings which more efficient actions bring to the superior, will not be all allowed to remain with them, but part will be drafted off in some indirect way to eke out the lower earnings of the less diligent or the less capable; and in so far as this is done, the law of equal freedom must be broken. Evidently the constitution of the State appropriate to that industrial type of society in which equity is fully realized, must be one in which there is not a representation of individuals but a representation of interests. For the health of the social organism and the welfare of its members, a balance of functions is requisite; and this balance cannot be maintained by giving to each function a power proportionate to the number of functionaries. The relative importance of

the different functions is not measured by the number of units occupied in discharging them; and hence the general welfare will not be achieved by giving to the various parts of the body politic, powers proportionate to their sizes.

§ 107. Whether hereafter there will arise a form of society in which equal political powers may be given to individuals, without giving to classes powers which they will misuse, is an unanswerable question. It may be that the industrial type, perhaps by the development of co-operative organizations, which theoretically, though not at present practically, obliterate the distinction between employer and employed, may produce social arrangements under which antagonistic class-interests will either not exist, or will be so far mitigated as not seriously to complicate matters. And it may be that in times to come men's regard for others' interests will so far check undue pursuit of their own interests, that no appreciable class-legislation will result from the equal distribution of political powers. But the truth we have to recognize is that with such humanity as now exists, and must for a long time exist, the possession of what are called equal political rights will not insure the maintenance of equal rights properly so-called.

Moreover, that constitution of the State which relative ethics justifies must, for another reason, diverge widely from that justified by absolute ethics. The forms of government appropriate to existing civilized societies must be transitional forms. As implied throughout the argument, the constitution of a State devoted to militancy must be fundamentally unlike the constitution of a State devoted to industrialism; and during the stages of progress from the one to the other, mixed forms of constitution have to be passed through—variable forms which are adjusted now to the one set of requirements, now to the other, as contingencies determine. For, as I have shown elsewhere (*Principles of Sociology*, §§ 547-575), if we exclude those

non-progressive types of mankind which have evolved social organizations that are no longer changeable, and contemplate the more plastic types still evolving, individually and socially, we see that increase in either kind of social action begins soon to produce change of structure.

We must therefore conclude that there is a quasi-ethical warrant for these mixed constitutions of the State which are appropriate to these mixed requirements. To maintain the conditions under which individual life and its activities may be carried on, being the supreme end; and maintenance of these conditions being endangered, now by masses of external enemies and now by single internal enemies; it results that there is a quasi-ethical justification for such political constitution as is best adapted to meet both kinds of dangers at any particular time; and there must be tolerated such unfitness for the one end as is necessitated by fitness for the other.

§ 108. The title of the chapter covers a further question, which must not be passed over—the use of political power by women. Already we have concluded that in militant societies, and partially militant societies, the possession of the franchise by women is not strictly equitable: they cannot justly have equal powers unless they have equal responsibilities. But here, supposing that with the cessation of militancy this obstacle should disappear, we have to ask whether, in that case, the giving of votes to women would be expedient. I say expedient, because, as we have seen, it is not a question of right in the direct and simple sense. The question is whether rights, properly so called, are likely to be better maintained if women have votes than if they have not. There are some reasons for concluding that maintenance of them would be less satisfactory rather than more satisfactory.

The comparative impulsiveness of women is a trait which would make increase of their influence an injurious factor

in legislation. Human beings at large, as at present constituted, are far too much swayed by special emotions, temporarily excited, and not held in check by the aggregate of other emotions; and women are carried away by the feelings of the moment still more than men are. This characteristic is at variance with that judicial-mindedness which should guide the making of laws. Freedom from passions excited by temporary causes or particular objects, is an obvious pre-requisite to good legislation. This pre-requisite is at present but imperfectly fulfilled, and it would be more imperfectly fulfilled were the franchise extended to women.

This moral difference is accompanied by a kindred intellectual difference. Very few men, and still fewer women, form opinions in which the general and the abstract have a due place. The particular and the concrete are alone operative in their thoughts. Nine legislators out of ten, and ninety-nine voters out of a hundred, when discussing this or that measure, think only of the immediate results to be achieved—do not think at all of the indirect results, or of the effect which the precedent will have, or of the influence on men's characters. Had women votes, this absorption of consciousness in the proximate and personal to the exclusion of the remote and impersonal, would be still greater; and the immense mischiefs at present produced would be augmented.

At the outset it was shown that there is a radical opposition between the ethics of the family and the ethics of the State, and that introduction of either into the sphere of the other is injurious—fatal, indeed, if extensive and continuous. Character is that which eventually determines conduct: the intelligence joined with it simply serving as a minister, procuring satisfactions for those feelings which make up the character. At present, both men and women are led by their feelings to vitiate the ethics of the State by introducing the ethics of the family. But it is especially

in the nature of women, as a concomitant of their maternal functions, to yield benefits not in proportion to deserts but in proportion to the absence of deserts—to give most where capacity is least. The love of the helpless, which may serve as a general description of the parental instinct, stronger in women than in men, and swaying their conduct outside the family as well as inside more than it sways the conduct of men, must in a still greater degree than in men prompt public actions that are unduly regardful of the inferior as compared with the superior. The present tendency of both sexes is to contemplate citizens as having claims in proportion to their needs—their needs being habitually proportionate to their demerits; and this tendency, stronger in women than in men, must, if it operates politically, cause a more general fostering of the worse at the expense of the better. Instead of that maintenance of rights which, as we have seen, is but a systematic enforcement of the principle that each shall receive the good and evil results of his own conduct, there would come greater and more numerous breaches of them than at present. Still more than now would the good which the superior have earned be forcibly taken away from them to help the inferior; and still more than now would evils which the inferior have brought upon themselves be shouldered on to the superior.

Another trait of nature by which women are distinguished, arises by adjustment, not to the maternal relation but to the marital relation. While their feelings have become moulded into special fitness for dealing with offspring, they have also become adjusted to an appropriate choice of husbands—so far at least as conditions have allowed them to choose. Power, bodily or mental, or both, is, and ever has been, that masculine trait which most attracts women; and by doing so furthers multiplication to the stronger. Varieties in which this instinctive preference was least marked must, other things equal, have

ever tended to disappear before other varieties. Hence in women a worship of power under all its forms; and hence a relative conservatism. Authority, no matter how embodied—politically, ecclesiastically, or socially—sways women still more than it sways men. Evidence of this is furnished by societies of all grades. Sanctified by the injunctions of ancestry, customs are adhered to by women more than by men, even where instinctive feelings might have been expected to produce an opposite effect; as instance the adhesion by the women among the Juangs to something less than Eve's dress after the men had taken to loin-cloths. Religious fanaticism, which is the expression of extreme subordination to a power conceived as supernatural, has always been carried further by women than by men. The difference was remarked among the Greeks; observers have noticed it in Japan; instances are supplied by the Hindoos; and it is at present manifest throughout Europe. This sentiment, then, which power and the trappings of power under all forms excite, must, if votes were given to women, strengthen all authorities, political and ecclesiastical. Possibly it may be thought that under present conditions a conservative influence of this kind would be beneficial; and did there not exist the trait above described, this might be so. But co-operating with the preference for generosity over justice, this power-worship in women, if allowed fuller expression, would increase the ability of public agencies to override individual rights in the pursuit of what were thought beneficent ends.

Whether in time to come, when the existing political complications caused by our transitional state have disappeared, such evils would result, is another question. It is quite possible that the possession of votes by women would then be beneficial.

But the immediate enfranchisement of women is urged on the ground that without it they cannot obtain legal recognition of their equitable claims. Experience does not

countenance this plea. During the last thirty years various disabilities of women have been removed with but little resistance from men. Comparing the behaviour of men to men with the behaviour of men to women, it is manifest that in modern times the sentiment of justice has been more operative in determining the last than in determining the first. Ill-treated classes of men have had to struggle far longer before they obtained from the classes who ill-treated them, the concessions they demanded, than women as a class have had to struggle before obtaining from men as a class, the various freedoms they asked. They have obtained these without political power; and there is no reason to doubt that such further injustice as they complain of—chiefly in respect of the custody of children—may be similarly removed without making the gigantic constitutional change which some of them seek.

That this probability amounts, indeed, to certainty, will be manifest if we look at the expectations in their simplest form. When it is openly contended that women must have the suffrage because otherwise they cannot get from men their just claims, it is practically contended that men will concede the suffrage knowing that with it they concede these claims, but will not concede the claims by themselves. A, the suffrage, involves the establishment of B, the claims; and the proposition is that though men will surrender A plus B, they will not surrender B by itself!

§ 109. Under the head of the constitution of the State, something must be said concerning the distribution of State-burdens as well as the distribution of State-power. Clearly there is as much reason for insisting on equitable sharing in the costs of government as for equitable sharing in the direction of government.

In the abstract the question does not appear to present any great difficulty. The amounts individually paid should be proportionate to the benefits individually received. So

far as these are alike, the burdens borne should be alike; and so far as they are unlike, the burdens borne should be unlike. Hence arises a distinction between the public expenditure for protection of persons and the public expenditure for protection of property. As life and personal safety are, speaking generally, held equally valuable by all men, the implication appears to be that such public expenditure as is entailed by care of these should fall equally on all. On the other hand, as the amounts of property possessed at the one extreme by the wage-earner and at the other extreme by the millionaire differ immensely, the implication is that the amounts contributed to the costs of maintaining property-rights should vary immensely—should be proportionate to the amount of property owned, and vary to some extent according to its kind. In respect to the costs of internal protection an approximately just distribution seems indicated by these considerations; but in respect of external protection a just distribution is more difficult to conceive. Invasion endangers both property and person. The citizen may be robbed, or he may be injured in body, or he may lose more or less freedom. A just distribution depends on the relative values put by each on these; and no expression of such values, either special or general, seems possible. Hence we must say that while militancy, or partial militancy, continues, nothing more than a rude approximation to a just incidence of public burdens can be made.

One conclusion, however, is clear. State-burdens, however proportioned among citizens, should be borne by all. Every one who receives the benefits which government gives should pay some share of the costs of government, and should directly and not indirectly pay it.

This last requirement is all-important. The aim of the politician commonly is to raise public funds in such ways as shall leave the citizen partly or wholly unconscious of the deductions made from his income. Customs duties and



excise duties are not unfrequently advocated for the reason that through them it is possible to draw from a people a larger revenue than could be drawn were the amount contributed by each demanded from him by the tax-gatherer. But this system, being one which takes furtively sums which it would be difficult to get openly, achieves an end which should not be achieved. The resistance to taxation, thus evaded, is a wholesome resistance; and, if not evaded, would put a proper check on public expenditure. Had each citizen to pay in a visible and tangible form his proportion of taxes, the sum would be so large that all would insist on economy in the performance of necessary functions and would resist the assumption of unnecessary functions; whereas at present, offered as each citizen is certain benefits for which he is unconscious of paying, he is tempted to approve of extravagance; and is prompted to take the course, unknowingly if not knowingly dishonest, of obtaining benefits at other men's expense.

During the days when extensions of the franchise were in agitation, a maxim perpetually repeated was—"Taxation without representation is robbery." Experience has since made it clear that, on the other hand, representation without taxation entails robbery.

## CHAPTER XXV.

### THE DUTIES OF THE STATE.

§ 110. Whether or not they accept the ethical principles set forth in the opening chapters of this part, most readers will agree with the practical applications of them made in subsequent chapters. Some, indeed, are so averse to deductive reasoning that they would gladly reject its results, even though they are verified by induction, could they do so. But the results in this case reached deductively, have one after another proved to be beliefs empirically established among civilized men at large, and, with increasing experience, have been more and more authoritatively formulated in law; so that rejection is scarcely practicable.

But here we are about to enter on topics concerning which there are divers opinions. To avoid raising prejudices against the conclusions reached, as being reached by a disapproved method, it will be best to proceed by a method which cannot be disapproved; and which, however insufficient taken by itself, all must admit to be good as far as it goes. Let us, then, commence inductively our inquiries concerning the duties of the State.

If the admired philosopher Hobbes, instead of deducing his theory of the State from a pure fiction, had prepared himself by ascertaining the facts as they are actually

presented in groups of primitive men, or men in the first stages of social life, he never would have propounded it. Had he known something more of savages as they really exist, he would not have ascribed to them those ideas of social order and its benefits, which are the products of developed social life; and he would have learnt that subordination to a ruling power is at the outset not in the least prompted by the motive he assigns. Instead of proceeding *a priori* as he did, let us proceed *a posteriori*—let us contemplate the evidence.

§ 111. The first fact is that where there neither is, nor has been, any war there is no government. Already it has been pointed out that among the Esquimaux, in the absence of inter-tribal conflicts, there are scarcely any of those conflicts between members of the tribe which Hobbes assumes must necessarily arise among ungoverned men. If, as occasionally happens, one Esquimo is ill-used by another, his remedy is an appeal to public opinion through a satirical song. The Fuegians, who gather in tribes of from twenty to eighty, have no chiefs; “nor did they seem to require one for the peace of their society,” says Weddell. Of the Veddahs, again, we read that the small clans have divisions of the forest which “are always honourably recognized;” and the head man of each, who is simply the most influential person, according to Tennant, “exercises no sort of authority beyond distributing at a particular season the honey captured by the various members of the clan.”

The second fact is that when between tribes ordinarily peaceful there occur wars, leading warriors acquire predominant influence. In each case there arises some man distinguished from others by greater strength, courage, skill or sagacity; and who, consequently deferred to, becomes acknowledged leader. But at first, as shown us by the Tasmanians, the man who thus acquires predominance during war, loses it when peace is re-established:

there returns the state of equality and absence of government. As, however, the wars between tribes commonly become chronic, it usually happens that the man who acts as leader, now in one war and presently in another, gains permanent authority. The deference shown to him extends over the interval between the wars, as well as during the the wars; and chieftainship is initiated. The Shoshones or Snakes of North America, which fall into three divisions, well illustrate these relationships of structure. The Mountain Snakes, scattered and wandering bands of men, who make no combined efforts to defend themselves against their hostile kindred, have no government. Among the War-are-aree-kas, or Fish-eaters, there is no trace of social organization, "except during salmon-time;" when, resorting to the rivers in numbers, there arises temporarily "some person called a chief," whose advice is accepted rather than obeyed. And then the Shirry-dikas, who hunt buffaloes and are better armed, show us more pronounced chieftainship; though authority still depends on "the personal vigour of the chief" and is readily transferred to another. Among the Comanches, who are relatively warlike, chiefs have more power; though the office is not hereditary, but results from "superior cunning, knowledge, or success in war." And from these stages upwards we may trace the rise of definite chieftainship as a concomitant of chronic hostilities with other tribes.

The third fact is that where the enterprising leader in war subdues adjacent tribes, and, by successive conquests, forms a larger consolidated society, his supremacy becomes settled; and with increase of his power goes the imposing of his will in other than militant actions. When, by this process, nations are formed and chiefs grow into kings, governmental power, becoming absolute, becomes also co-extensive with social life. Still it is to be observed that the king is above all things the leader in war. The records of the Egyptians and Assyrians, equally with the records

of European nations, show that the ruler is primarily the head soldier.

And then, grouping several minor facts under the head of a fourth fact, we see that where, as in modern nations, the head of the State no longer commands his armies in battle, but deposes this function, he nevertheless is nominally a soldier—receives a military or naval education. Only in republics do there arise civil headships, and these are apt to lapse back into military ones. It needs only continued war to transform the government into its primitive type of a military dictatorship.

Thus induction puts beyond doubt the truth that government is initiated and developed by the defensive and offensive actions of a society against other societies. The primary function of the State, or of that agency in which the powers of the State are centralized, is the function of directing the combined actions of the incorporated individuals in war. The first duty of the ruling agency is national defence. What we may consider as measures to maintain inter-tribal justice, are more imperative, and come earlier, than measures to maintain justice among individuals.

§ 112. While are we thus taught that the subordination of citizens to rulers has at first no such purpose as that which Hobbes fancied, we are also taught that for a long time the fulfilment of such purpose is not even attempted. Many simple societies exist permanently, and many complex societies have existed for long periods, without any measures being taken by the ruler to prevent aggressions of individuals on one another.

While the necessity for combined action against enemies of the tribe is obvious and peremptory, and prompts obedience to the leader, no obvious necessity exists for defending one member of the tribe against another: danger to tribal welfare is either not recognized or not thought great enough to call for interference. While there was no

headship at all, and during times when headship existed only as long as war lasted, each member of the tribe maintained his own claims as well as he could: when injured, he did his best to injure the aggressor. This rude administration of justice, which we see among gregarious animals as well as among primitive hordes of men, having been a recognized custom before any political rule existed, long survived the establishment of political rule, as being a custom accepted from ancestry and sanctified by tradition. Hence in all early societies we find the *lex talionis* in force—now independently of the ruler, and now recognized by the ruler.

Beginning with the North American Indians we read of the Snakes, the Creeks, the Dacotahs, that private wrongs were avenged by the injured individuals or their families; that among the Comanches this system of retaliation was habitual, though councils sometimes interfered without success; and that among the Iroquois, with a comparatively well-developed government, the private righting of wrongs was permitted. So in South America, the Uaupes, the Patagonians, the Araucanians may be named as showing us degrees, more or less marked, of political subjection co-existing with primitive administration of justice by each man for himself, or by his family for him. In Africa, containing peoples in various stages of advance, we meet with various mixtures of systems. A Bechuanas king or chief makes little use of his power for punishment of any other crimes than those committed against himself or his servants. An injured man among the East Africans sometimes revenges himself and sometimes appeals to the chief. Some tribes of Coast Negroes have judicial punishments, while in others murder is avenged by deceased's kindred; and there is a like variation in Abyssinia. Turning to Asiatics, we find that among the Arabs the prevalence of one or other of these modes of checking aggressions, depends on the state of the group as wandering or settled: where wan-

dering, private retaliation and enforced restitution is the practice, but punishment by a ruler is usual in Arab towns. By the Bheels is shown a ratio between the chief's punitive action and that of the individual, which changes according to the chief's power; and by the Khonds, who pay little respect to authority, justice is enforced by private action. The custom of the Karens, too, is for each man to take the law into his own hands: the principle being that of equal damage.

That kindred states of things existed among the Aryan tribes which peopled Europe in early days, is a familiar fact. Private vengeance and public punishment were mingled in various proportions: the one decreasing and the other increasing along with progress to a higher state. Says Kemble:—"The right of feud . . . lies at the root of all Teutonic legislation . . . each freeman is at liberty to defend himself, his family and his friends; to avenge all wrongs done to them." Instead of being, as at first, his own judge respecting the extent of retaliation, the injured man presently came to have restraints put upon him by custom; and there grew up established rates of compensation for injuries, varying according to rank. When political authority gained strength, the first step was that of enforcing the customary fines, and, in default, permitting private rectification—"Let amends be made to the kindred, or let their war be borne." During this transitional stage, which is traceable among some of the German tribes when first described, part of the compensation went to the man or family injured, while part went to the ruler. Under feudalism the system of private rectification of wrongs slowly yielded to the public rectification only as the central government gained power. The right of private war between nobles continued among ourselves down to the 12th and 13th centuries, and in France even later. So deeply rooted was it that in some cases, feudal lords thought it a disgrace to maintain their

rights in any other ways than by force of arms. With all which we must join the long survival of judicial duels and of private duels.

The facts have to be contemplated under two other aspects. Not only is the primary function of government that of combining the actions of the incorporated individuals for war, while its secondary function of defending its component members against one another is step by step established; but this secondary function arises by differentiation from the primary one. Even in the earliest stages the private rectification of wrongs is in part the business of the individual wronged and in part the business of his family or relatives. The progress which brings development of the family organization, at the same time that it brings aggregation of clusters of families or clans into a society, develops the doctrine of family responsibility. That is to say, the private wars between family-groups come to be of the same nature as the public wars between societies; and the enforcement of private justice is akin to the enforcement of inter-tribal justice. Hence arises the idea, which seems to us so strange, that if, when a member of one group has been murdered, a member of the group to which the murderer belongs is killed, it is indifferent whether the victim be the murderer or not. The group is injured to an equivalent extent, and that is the essential requirement.

The other noticeable aspect of the facts is that this rude enforcing of justice by private wars, is changed into public administration of justice, not because of the ruler's solicitude to maintain equitable relations, but much more because of his solicitude to prevent that weakening of his society which internal dissensions must produce. Be he primitive chief, or be he captain of banditti, a leader must check fights among his followers; and what is by these shown on a small scale was shown on a larger scale when, in feudal times, kings forbade private wars between nobles during the



times when international wars were going on. Manifestly a king's desire to maintain a social order which conduces to fighting efficiency, prompts the practice of arbitrating between antagonist followers; and manifestly appeals made to him by the injured, recognizing as they do his authority, and responded to for this reason, tend more and more to establish his judicial and legislative powers.

Once established, this secondary function of the State goes on developing; and becomes a function next in importance to the function of protecting against external enemies. The truth to be specially emphasized here, is that while other kinds of governmental action diminish, this kind of governmental action increases. Militant activities may become gradually less, and political agency may retire from various regulative actions previously exercised over citizens. But with the progress of civilization, the administration of justice continues to extend and to become more efficient.

§ 113. And now, having reached these conclusions inductively, let us see whether corresponding conclusions cannot be reached deductively. Let us see whether from the natures of men as socially conditioned, it is not inferable that these two State-duties are the essential ones.

At the outset it was shown that the prosperity of a species is achieved by conformity to two opposite principles, appropriate to the young and to the adult respectively: benefits being inversely proportioned to worth in the one case and directly proportioned to worth in the other. Confining our attention to the last of these principles, which now alone concerns us, it is clear that maintenance of those conditions under each one's efforts bring their due rewards is, in the case of a society, liable to be traversed by external foes and by internal foes. The implication is that for the prosperity of a species, or in this case of a society, these conditions must be maintained by a due exercise of force; and for the

exercise of such force the corporate action of the society is demanded—imperatively in the one case and with something approaching to imperativeness in the other. To such exercise of force, citizens at large (excluding criminals) have good reasons to assent. Observe their motives.

Such contingent loss of life and partial loss of liberty as are entailed on soldiers, and such deductions from their earnings as other citizens have to contribute to support soldiers, are felt by each to be justified as instrumental to the supreme end of enabling him to carry on his activities and to retain the reward for them—sacrifice of a part to ensure the remainder. Hence he tacitly authorizes the required State-coercion.

Though the need for corporate guardianship against internal foes is less urgently felt, yet from the pursuit of his ends by each there arises a resultant desire for such guardianship. As in every community the relatively-strong are few, and the relatively-weak are many, it happens that in the majority of cases purely private rectification of wrongs is impracticable. If beyond the aid of family and friends, often inadequate, there can be obtained the aid of some one more powerful, it is worth buying—at first by a bribe, and presently by tribute. Eventually, all find it answer best to pay for security rather than suffer aggressions.

Thus these primary and secondary duties of the State are implied by those fundamental needs which associated men experience. They severally desire to live, to carry on their activities, and reap the benefits of them. All have motives to maintain against external enemies the conditions under which these ends may be achieved, and all, save aggressors of one or other kind, have motives to maintain these conditions against internal enemies. Hence at once the duty of the State and the authority of the State.

§ 114. If these duties devolve upon the State, then the

State is under obligation to take such measures as are needful for efficiently discharging them.

That defensive appliances sufficient to meet imminent dangers must be provided, every one admits. Even where no attack by foreign foes seems likely, there should be maintained adequate forces to repel invasion; since total unpreparedness may invite attack. Though in this part of the world, and in our days, descents made without excuse by plundering hordes may not have to be guarded against; yet the readiness shown by peoples called civilized to hurl large armies upon one another with but small provocation, makes it manifest that even the most advanced nations cannot prudently trust their neighbours. What amount of military power is needful for safeguarding, of course depends on circumstances, and is a matter of judgment in each case.

But while the need for maintaining such an organization as is requisite for duly discharging the first duty of the State is fully recognized, the need for maintaining such an organization as is requisite for duly discharging its second duty is far from fully recognized. As we have seen above, the defence of citizens one against another, not at first a business of the government, has been undertaken by it but gradually; and even in the most civilized societies its discharge of this business is still but partial, and the propriety of full discharge of it is denied. I do not of course mean that the responsibility of the State for guarding citizens against offenders classed as criminal, is not admitted and fulfilled; but I mean that the State neither admits, nor is supposed by citizens to have, any responsibility for guarding them against offenders classed as civil. Though, if one who receives a rude push invokes the agents of the State, they will take up his case and punish the assailant; yet if he is defrauded of an estate they turn deaf ears to his complaint, and leave him either to bear the loss, or run the risk of further and perhaps greater loss in carrying on a suit and possibly appeals.

Not by lawyers only, but by most other people this condition of things is defended ; and the proposition that it is the duty of the State to administer justice without cost, in civil as well as in criminal cases, is ridiculed : as, indeed, every more equitable arrangement is ridiculed before successful establishment of it proves its propriety. It is argued that did the State arbitrate between men *gratis*, the courts would be so choked with cases as to defeat the end by delay : to say nothing of the immense expense entailed on the country. But this objection proceeds upon the vicious assumption that while one thing is changed other things remain the same. It is supposed that if justice were certain and could be had without cost, the number of trespasses would be as great as now when it is uncertain and expensive ! The truth is that the immense majority of civil offences are consequent on the inefficient administration of justice—would never have been committed had the penalties been certain.

But when we come to contemplate it, it is a marvellous proposition, this which the objection implies, that multitudinous citizens should be left to bear their civil wrongs in silence or risk ruin in trying to get them rectified ; and all because the State, to which they have paid great sums in taxes, cannot be at the trouble and expense of defending them ! The public evil of discharging this function would be so great, that it is better for countless citizens to suffer the evils of impoverishment and many of them of bankruptcy ! Meanwhile, through the officers of its local agents, the State is careful to see that their stink-traps are in order !

§ 115. One further duty of the State, indirectly included in the last but distinguishable from it, must be set down, and its consequences specified. I refer to its duty in respect of the inhabited territory.

For employments of the surface other than those already

established, and tacitly authorized by the community through its government, there require State - authorizations. As trustee for the nation the government has to decide whether a proposed undertaking—road, canal, railway, dock, &c.—which will so change some tract as to make it permanently useless for ordinary purposes, promises to be of such public utility as to warrant the alienation ; and has to fix the terms for its warrant: terms which, while they deal fairly with those who stake their capital in the enterprise, and while they protect the rights of the existing community, also keep in view the interests of future generations, who will hereafter be supreme owners of the territory. For the achievement of these several ends, the equitable arrangement would seem to be, not a permanent alienation of the required tract ; nor an unscrupulous breaking of the contract by the State at will, as now ; but an alienation for a specified period, with the understanding that the conditions may, at the termination of that period, be revised.

In discharge of its duties as trustee, the ruling body has to exercise a further control—allied but different. If not itself, then by its local deputies, it has to forbid or allow the breaking up of streets, roads, and other public spaces for the establishment or repair of water, gas, telegraph, and kindred appliances. Such supervisions are required for protecting each and all members of the community against the aggressions of particular members or groups of members.

That like considerations call for oversight by the State of rivers, lakes, or other inland waters, as also of the adjacent sea, is sufficiently clear. On the uses made of these and their contents, there may rightly be put such restraints as the interests of the supreme owner, the community, demand.

§ 116. And now what are these duties of the State considered under their most general aspect? What has a

society in its corporate capacity to do for its members in their individual capacities? The answer may be given in several ways.

The prosperity of a species is best subserved when among adults each experiences the good and evil results of his own nature and consequent conduct. In a gregarious species fulfilment of this need implies that the individuals shall not so interfere with one another as to prevent the receipt by each of the benefits which his actions naturally bring to him, or transfer to others the evils which his actions naturally bring. This, which is the ultimate law of species life as qualified by social conditions, it is the business of the social aggregate, or incorporated body of citizens, to maintain.

This essential requirement has to be maintained by all for each, because each cannot effectually maintain it for himself. He cannot by himself repel external invaders; and on the average, his resistance to internal invaders, if made by himself or with the aid of a few, is either inefficient, or dangerous, or costly, or wasteful of time, or all of these. To which add that universal self-defence implies chronic antagonisms, either preventing or greatly impeding co-operation and the facilitations to life which it brings. Hence, in distinguishing between things to be done by corporate action and things to be done by individual action, it is clear that, whether or not it does anything else, corporate action may rightly be used to prevent interferences with individual action beyond such as the social state itself necessitates.

Each citizen wants to live, and to live as fully as his surroundings permit. This being the desire of all, it results that all, exercising joint control, are interested in seeing that while each does not suffer from breach of the relation between acts and ends in his own person, he shall not break those relations in the persons of others. The incorporated mass of citizens has to maintain the conditions

under which each may gain the fullest life compatible with the fullest lives of fellow citizens.

Whether the State has other duties is a question which remains now to be discussed. Between these essential functions and all other functions there is a division which, though it cannot in all cases be drawn with precision, is yet broadly marked. To maintain intact the conditions under which life may be carried on is a business fundamentally distinct from the business of interfering with the carrying on of the life itself, either by helping the individual or directing him, or restraining him. We will first inquire whether equity permits the State to undertake this further business ; and we will then inquire whether considerations of policy coincide with considerations of equity.

## CHAPTER XXVI.

### THE LIMITS OF STATE-DUTIES.

§ 117. During those early stages in which the Family and the State were not differentiated, there naturally arose the theory of paternal government. The members of the group were "held together by common obedience to their highest living ascendant, the father, grandfather, or great-grandfather." Ignoring those still earlier social groups of which Sir Henry Maine takes no account, we may accept his generalization that among Aryan and Semitic peoples, the despotic power of the father over his children, surviving more or less as his children became heads of families, and as again their children did the same, gave a general character to the control exercised over all members of the group. The idea of government thus arising, inevitably entered into the idea of government which became established as compound families grew into communities; and it survived when many of such small communities, not allied in blood or but remotely allied, became consolidated into larger societies.

The theory of paternal government originating in this way is a theory which tacitly asserts the propriety of unlimited government. The despotic control of the father extends to all acts of his children; and the patriarchal government growing out of it, naturally came to be exercised over the entire lives of those who were subject. The stage was one



in which distinctions and limitations had not yet arisen; and while the group retained something like its original constitution, having in the main a common origin and holding in partial if not entire community the inhabited tract and its produce, the conception of government as unlimited in range was probably one best adapted to the requirements.

But this ancient social idea, like ancient religious ideas, survives, or continually re-appears, under conditions utterly unlike those to which it was appropriate. The notion of paternal government is entertained in a vague sentimental way, without any attempt being made definitely to conceive its meaning; and consequently without any perception of the inapplicability of the notion to developed societies. For none of the traits of paternal government as it originally arose, exists now, or is possible. Observe the contrasts.

Fatherhood habitually implies ownership of the means by which children and dependents are supported; and something like such ownership continued under the patriarchal form of rule. But in developed nations not only is this trait absent, but the opposite trait is present. The governing agent does not now support those over whom it exercises authority, but those over whom it exercises authority support the governing agent. Under paternal rule, truly so called, the possessor of the power, being possessor of everything else, was benefactor to his children as well as controller of them; whereas a modern government, along with a power which is in chief measure given by those who are supposed to stand in the place of children, cannot be in such sense a benefactor, but has to receive from the children the means which enable it to do anything for them. Again, in simple and compound family-groups there is an approach to identity of interests between rulers and ruled: the bonds of blood-relationship go far to insure a regulative action conducive to the general welfare. But in advanced societies there enter into the political relations

no such emotions as those arising from family feeling and kinship, which serve to check the self-seeking of the ruling agent, be it king, oligarchy, or such democratic body as the United States show us. Once more, the supposed parallel fails in respect of knowledge and wisdom. With the primitive paternal power, and the patriarchal power derived from it, there generally went wider experience and deeper insight than were possessed by the descendants who were ruled. But in developed societies no such contrast exists between the mental superiority of those supposed to stand in the position of father, and the mental inferiority of those supposed to stand in the position of children. Contrariwise, among those figuratively spoken of as children, there exist many who are at once better informed and intellectually stronger than the ruling-head, single or multiple, as the case may be. And where, the head being multiple, the so-called children have to choose from among themselves those who shall constitute it, they habitually ignore the best-fitted: the result being that rule is exercised not so much by the collective wisdom as by the collective folly—the paternal and filial relation is in another way reversed.

Hence that theory of the functions of the State which is based on this assumed parallelism is utterly false. The only justification for the analogy between parent and child and government and people is the childishness of the people who entertain the analogy.

§ 118. A conception of State-duties which is connate with the last but gradually diverges from it, must next be noticed. I refer to the conception generated by experiences of those governmental actions needful for carrying on wars, which, up to recent times, have been its chief actions.

In social groups of types preceding the patriarchal, headship becomes established by frequent wars; and in the patriarchal group the head of the warriors is ordinarily

head of the State. This identity, continuing through subsequent stages, determines the nature of government at large. That men may be good soldiers they must not only be subordinate, grade under grade, and must not only be drilled in warlike exercises, but must have their daily habits regulated in ways conducive to efficiency. More than this: the soldier-king, regarding the whole community as a body from which soldiers and supplies are to be drawn, extends his control over the entire lives of his subjects. And since nations in general have been, as many of them still are, predominantly militant, this idea of governmental power, with its concomitant idea of the duties of the State, has been almost universal.

In the most militant of Greek States, Sparta, preparation for war was the business of life, and the whole of life was regulated with a view to this preparation. Though in Athens no such strenuous efforts to achieve this end were made, yet there was a recognition of this end as the predominant one. Plato's ideal republic was one in which, by education, citizens were to be moulded into fitness for social requirements, of which the chief was national defence; and this power of the incorporated community over its units was to go to the extent of regulating the procreation of them, both by selection of parents and by due adjustment of their ages. So, too, in Aristotle's *Politics*, it is urged that education should be taken out of the charge of parents, and that the different classes of citizens, differently educated, should be respectively adapted to public needs: authority being also assigned to the legislator to regulate marriage and the begetting of children. Thus the conception of governmental functions developed by militancy, and appropriate to a fighting body, becomes the conception of governmental functions at large.

Here, as before, we see that ideas, sentiments, and habits appropriate to early stages of development survive throughout later stages, to which they are no longer appropriate;

and pervert the prevailing beliefs and actions. For by many the conception of State-duties that was fit for Greek societies, is supposed to be fit for modern societies. Though the best social organization as conceived by Socrates and approved by Plato, was one in which the industrial classes were to be absolutely subject to the classes above them—though, in his *Politics*, Aristotle, regarding the family as normally consisting of freemen and slaves, taught that in the best-regulated States no mechanic should be a citizen, and that all tillers of the ground should be serfs; yet it is believed that we may with advantage adopt the accompanying theory of State-duties! One whose conceptions of right and wrong were shown in the belief that it is impossible for a man who lives the life of a mechanic or hired-servant to practise virtue, is supposed to be one to whose conceptions of right and wrong in social affairs we may wisely defer! It is thought that the ideas appropriate to a society organized throughout on relations of *status*, are adapted to a society organized throughout on relations of contract! A political ethics belonging to a system of compulsory co-operation applies also to a system of voluntary co-operation!

§ 119. There is indeed the excuse that to some extent among ourselves, and to a much larger extent among continental peoples, the militant life, potential when not actual, still forms so considerable, and in many cases so great, a part of the social life as to render these traditional doctrines appropriate.

Compromise between old and new, which has perpetually to be made in practice, has to be made also in theory; for this must, on the average, conform itself to practice. It is therefore out of the question that there can be generally entertained the belief that governmental action should be subject to certain imperative restraints. The doctrine that there is a limited sphere within which only State-control

may rightly be exercised, is a doctrine natural to the peaceful and industrial type of society when fully developed ; and is not natural either to the militant type or to types transitional between militancy and industrialism. Just relations between the community and its units cannot exist during times when the community and its units are jointly and severally committing injustices abroad. Men who hire themselves out to shoot other men to order, asking nothing about the equity of their cause, are not men by whom there can be established equitable social arrangements. While the nations of Europe are partitioning among themselves parts of the Earth inhabited by inferior peoples, with cynical indifference to the claims of these peoples, it is foolish to expect that in each of these nations the government can have so tender a regard for the claims of individuals as to be deterred by them from this or that apparently politic measure. So long as the power to make conquests abroad is supposed to give rights to the lands taken, there must of course persist at home the doctrine that an Act of Parliament can do anything—that the aggregate will may rightly impose itself on individual wills without any limit.

It may indeed be contended with reason that under existing conditions belief in the unrestricted authority of the State is necessary. The tacit assumption that the controlling agency which a community appoints or accepts, is subject to no restraints, has the defence that without it there could not be ensured that combined action from time to time required for meeting emergencies. As in war lack of faith in a leader may be a cause of defeat, so in war scepticism respecting governmental authority may produce fatal hesitations and dissensions. So long, therefore, as the religion of enmity so largely qualifies the religion of amity, the doctrine of unlimited State-authority must prevail.

§ 120. And now, having seen how the current conception of State-duties originated, and how it has survived into

modern conditions for which it is but partially adapted, we are the better prepared to entertain the true conception of State-duties. After recognizing the probability, if not the certainty, that a theory concerning the proper sphere of government which was fit for societies organized on the principle of compulsory co-operation, must be unfit for societies organized on the principle of voluntary co-operation, we may proceed to ask what is the theory appropriate to these.

Each nation constitutes a variety of the human race. The welfare of humanity at large will be achieved by the prosperity and spread of the best varieties. After there has ended the predatory stage of progress—after there has come the stage in which the competition among societies is carried on without violence, there will, other things equal, be an increasing predominance of societies which produce the greatest numbers of the best individuals. Production and maintenance of the best individuals is achieved by conformity to the law that each shall receive the good and evil results of his own nature and consequent conduct; and in the social state, the conduct of each bringing to him these results, must be restrained within the limits imposed by the presence of others similarly carrying on actions and experiencing results. Hence, other things equal, the greatest prosperity and multiplication of efficient individuals will occur where each is so constituted that he can fulfil the requirements of his own nature without interfering with the fulfilment of such requirements by others.

What, then, becomes the duty of the society in its corporate capacity, that is, of the State? Assuming that it is no longer called on to guard against external dangers, what does there remain which it is called on to do? If the desideratum, alike for the individuals, for the society, and for the race, is that the individuals shall be such as can fulfil their several lives subject to the conditions named; then it is for the society in its corporate capacity to insist

that these conditions shall be conformed to. Whether, in the absence of war, a government has or has not anything more to do than this, it is clear it has to do this. And, by implication, it is clear that it is not permissible to do anything which hinders the doing of this.

Hence the question of limits becomes the question whether, beyond maintaining justice, the State can do anything else without transgressing justice. On consideration we shall find that it cannot.

§ 121. For if the State goes beyond fulfilment of its duty as above specified, it must do this in one or both of two ways which severally or jointly reverse its duty.

Of further actions it undertakes, one class comes under the definition of actions which restrain the freedom of some individuals more than is required by maintenance of the like freedom of other individuals; and such actions are themselves breaches of the law of equal freedom. If justice asserts the liberty of each limited only by the like liberties of all, then the imposing of any further limit is unjust; no matter whether the power imposing it be one man or a million of men. As we have seen throughout this work, the general right formulated, and all the special rights deducible from it, do not exist by authority of the State; but the State exists as a means of preserving them. Hence if, instead of preserving them, it trenches upon them, it commits wrongs instead of preventing wrongs. Though not in every society, yet in our society, the killing of all infants which do not reach the standard of goodness required by public authority, would probably be regarded as murder, even though committed by many individuals instead of one; and though not in early times, yet in our time, the tying of men to the lands they were born on, and the forbidding any other occupations than prescribed ones, would be considered as intolerable aggressions on their liberties. But if these larger inroads on their rights are

wrong, then also are smaller inroads. As we hold that a theft is a theft whether the amount stolen be a pound or a penny, so we must hold that an aggression is an aggression whether it be great or small.

In the other class of cases the wrong is general and indirect, instead of being special and direct. Money taken from the citizen, not to pay the costs of guarding from injury his person, property, and liberty, but to pay the costs of other actions to which he has given no assent, inflicts injury instead of preventing it. Names and customs veil so much the facts, that we do not commonly see in a tax a diminution of freedom; and yet it clearly is one. The money taken represents so much labour gone through, and the product of that labour being taken away, either leaves the individual to go without such benefit as was achieved by it or else to go through more labour. In feudal days, when the subject-classes had, under the name of *corvées*, to render services to their lords, specified in time or work, the partial slavery was manifest enough; and when the services were commuted for money, the relation remained the same in substance though changed in form. So is it now. Tax-payers are subject to a State-*corvée*, which is none the less decided because, instead of giving their special kinds of work, they give equivalent sums; and if the *corvée* in its original undisguised form was a deprivation of freedom, so is it in its modern disguised form. "Thus much of your work shall be devoted, not to your own purposes, but to our purposes," say the authorities to the citizens; and to whatever extent this is carried, to that extent the citizens become slaves of the government.

"But they are slaves for their own advantage," will be the reply—"and the things to be done with the money taken from them are things which will in one way or other conduce to their welfare." Yes, that is the theory—a theory not quite in harmony with the vast mass of mischievous legislation filling the statute-books. But this



reply is not to the purpose. The question is a question of justice; and even supposing that the benefits to be obtained by these extra public expenditures were fairly distributed among all who furnish funds, which they are not, it would still remain true that they are at variance with the fundamental principle of an equitable social order. A man's liberties are none the less aggressed upon because those who coerce him do so in the belief that he will be benefited. In thus imposing by force their wills upon his will, they are breaking the law of equal freedom in his person; and what the motive may be matters not. Aggression which is flagitious when committed by one is not sanctified when committed by a host.

Doubtless most persons will read with astonishment this denial of unrestricted State-power, and this tacit assertion that the State commits an offence when it exceeds the prescribed limits. In all places and times the beliefs which accompany the established institutions and habits, seem to those who hold them uncontrovertible. The fury of religious persecution has everywhere had behind it the conviction that dissent from the current creed implied deliberate wickedness or demoniacal possession. It was thought monstrous to question the authority of the Church in days when the Pope was supreme over kings; and at the present time, in parts of Africa, how monstrous it is thought to reject the local creed is shown by the remark concerning disbelieving Europeans—"What fools these white men are!" So has it been politically. As in Fiji where, until recently, a man stood unbound to be killed, himself declaring that "whatever the king says must be done," it was held impossible to doubt the unbounded power of the ruling man—as throughout Europe, while the doctrine of the divine right of kings was universally accepted, the assertion that the many ought not to obey the one was regarded by nearly all as the worst of crimes—as, even but a century ago, a Church-and-King mob were

ready to take the life of a preacher who publicly dissented from the established forms of government, political and ecclesiastical ; so is it in a measure even still. One who denies the unlimited authority of the State is sure to be regarded by men at large as a fool or a fanatic. Instead of that "divinity which doth hedge a king," we have now the divinity which doth hedge a parliament. The many-headed government appointed by multitudes of ignorant people, which has replaced the single-headed government supposed to be appointed by heaven, claims, and is accorded, the same unrestricted powers. The sacred right of the majority, who are mostly stupid and ill-informed, to coerce the minority, often more intelligent and better-informed, is supposed to extend to all commands whatever which the majority may issue ; and the rectitude of this arrangement is considered self-evident.

Hence, just as among those who uphold the "sacred duty of blood-revenge," the injunction to forgive injuries is unlikely to meet with much acceptance ; so it is not to be expected that among party politicians, eagerly competing with one another to gain votes by promising State-aids of countless kinds, any attention will be paid to a doctrine of State-duties which excludes the great mass of their favourite schemes. But in face of all the contemptuous reprobation coming from them, it must still be asserted, as above, that their schemes are at variance with the fundamental principle of a harmonious social life.

§ 122. Here, if kept strictly within its limits, this division of the *Principles of Ethics* should be brought to a close. Having seen what is the dictum of absolute ethics respecting the duties of the State, and having seen what qualifications are implied by that relative ethics which takes cognizance of the requirements generated by international aggressiveness—having further seen that during the transition between the militant and industrial forms of social life, an

unduly exalted conception of State-authority (which is natural and in large measure necessary) fosters a multiplicity of unjust State-actions; there remains, from an ethical point of view, no more to be said. But it will be desirable here to devote some space to the proofs that these actions which are unjust in theory are also impolitic in practice.

The subject is a vast one, and cannot of course be fully dealt with in the space available. It will not be practicable to do more than present in outline the various divisions of the argument, with such few illustrations as are needful to indicate their bearings.

We will first deal with the State considered generally as an instrumentality, in contrast with other instrumentalities. We will examine next the assumption that it has a nature fitting it to remedy other evils than those entailed by aggression, external or internal. We will then consider the validity of the reasons for ascribing to it the duty and the power of achieving positive benefits. And we will end by inquiring whether the ultimate purpose—a higher development of human nature—is likely to be aided or hindered by its extended activities.

NOTE. Respecting the conclusions set forth in the following three chapters, it seems proper to say that their validity must not be measured solely by the evidence given, and the arguments used, in support of them. For the full vindication of these conclusions, and for the multitudinous facts which justify them, the reader is referred to various essays from time to time published, and now re-published in the library edition of my Essays. The titles of them are :—"Over-Legislation ;" "Representative Government

—What is it Good for ?” “State-Tamperings with Money and Banks ;” “The Collective Wisdom ;” “Political Fetishism ;” and “Specialized Administration.” To these may be added sundry chapters forming the latter part of *Social Statics*, at present withdrawn from circulation, but selected portions of which I hope presently to re-publish.

## CHAPTER XXVII.

### THE LIMITS OF STATE-DUTIES *CONTINUED*.

§ 123. We saw (in Chap. XXIII.) that at a later stage of evolution a society may acquire a nature fundamentally unlike the nature it had at an earlier stage; and we drew the corollary that a theory of State-duties appropriate when it had one nature must be inappropriate when it has the other nature. Here we have to draw a further corollary. The implied change of nature absolves the State from various functions for which it was at first the best agent; and generates for these functions other and better agents.

While war was the business of life, while militant organization was imperative, and while coercive rule was needful for disciplining improvident men and curbing their anti-social natures, agencies of a non-governmental kind could not develop. Citizens had neither the means, nor the experience, nor the characters, nor the ideas, needed for privately co-operating in extensive ways. Hence all large purposes devolved on the State. If roads had to be made, if canals had to be cut, if aqueducts had to be built, the only instrumentality was governmental power exercised over slaves.

But with decline of militancy and rise of industrialism—the decay of the system of *status* and growth of the system of contract—there have gradually become possible, and have gradually arisen, multitudinous voluntary asso-

ciations among citizens for discharging numerous kinds of functions. This result has been consequent on modifications of habits, dispositions, and modes of thought, which have been, generation after generation, produced by the daily exchange of services under agreement, in place of the daily enforcing of services. One result is that there can now be achieved without governmental power, various ends which in early days governmental power alone could achieve.

In discussing the sphere of State-action we must take into account this profoundly significant fact. More than this: we must take into account a manifest inference. The changes above indicated are far from being ended; and we are justified in concluding that with further progress of them there may rightly go further relinquishment of functions which the State once discharged.

§ 124. That such relinquishment of functions by the State, and assumption of them by other agencies, constitutes a progress, should be manifest to all who know anything about the laws of organization; though, unhappily, this truth seems no more appreciated by them than by those who began their school-days with making nonsense-verses and pass their mature years in pushing forward *ad captandum* legislation. For concerning individual organisms and social organisms, nothing is more certain than that advance from lower to higher, is marked by increasing heterogeneity of structures and increasing subdivision of functions. In both cases there is mutual dependence of parts, which becomes greater as the type becomes higher; and while this implies a progressing limitation of one function to one part, it implies also a progressing fitness of such part for such function.

When, some fifty years ago, Milne Edwards gave to this principle of development in animals the name "physiological division of labour," he recognized the parallelism between vital economy and social economy; and this parallelism has been since growing ever clearer. But though among the

cultured few, there is now some vague recognition of it; and though more especially the increasing division of labour which the industrial part of the social organism displays, has been made familiar by political economists, and the advantages of it duly insisted upon; there is little or no perception of the truth that the principle holds also within the controlling part, and throughout its relations to the other parts. Even without the facts which illustrate it, we might be certain that specialization, with consequent limitation, normally takes place in the regulative structures of a society as in all its other structures; that advantage is achieved by such specialization and limitation; and that any reverse change constitutes a retrogression.

The implication is therefore the same as before. All-embracing State-functions characterize a low social type; and progress to a higher social type is marked by relinquishments of functions.

§ 125. Most readers will feel little faith in these general conclusions. It will be needful to enforce them by arguments more readily appreciated.

In § 5 I named the fact that the welfare of any living body depends on the due proportioning of its several parts to their several duties; and that the needful balance of power among the parts is effected by a constant competition for nutriment, and the flowing to each of a quantity corresponding to its work. That competition throughout the industrial parts of a society achieves a kindred balance in a kindred way, needs no proof; and that social needs at large are best subserved by carrying out, wherever possible, this relation between effort and benefit, is manifest.

Now in all those non-governmental co-operations constituting the greater part of modern social life, this balancing is spontaneously effected. I need not dwell on the principle of supply and demand as displayed throughout our industrial organization; and I need not do more than hint that this

same principle holds throughout all other non-governmental agencies—bodies for voluntary religious teaching, philanthropic associations, trades unions. Among all such, activity and growth, or quiescence and decay, occur according as they do or do not fulfil wants that are felt. Nor is this all. A truth which cannot be too much emphasized is that under this stress of competition, each of these agencies is impelled to perform the greatest amount of function in return for a given amount of nutrition. Moreover, competition constantly impels it to improve; to which end it not only utilizes the best appliances but is anxious to get the best men. The direct relation between efficiency and prosperity obliges all voluntary co-operations to work at high pressure.

Contrariwise, the compulsory co-operations by which governmental actions are effected, instead of direct relations between function and nutrition, show us highly indirect relations. Public departments, all of them regimented after the militant fashion, all supported by taxes forcibly taken, and severally responsible to their heads, mostly appointed for party reasons, are not immediately dependent for their means of living and growing on those whom they are designed to benefit. There is no fear of bankruptcy to prompt efficient and rapid performance of duty; there is no taking away of business by an opponent who does work more economically; there is no augmenting of profits by adopting improvements, still less by devising them. Every kind of defect results. As was lately said to me by one official concerning another, on whose remissness I was commenting—"Oh, he gets good pay and doesn't want to be bothered." In consequence of this indirectness of relation between benefits yielded and payments received, governmental agencies may continue to exist and draw funds for years, and sometimes for generations, after they have ceased to be of service; and when they are weak, or careless, or slow, the inefficiency has to be rectified by pressure exercised through the governmental machine—a



machine so cumbrous and complex that only great pressure exercised with great patience can effect the needful change.

§ 126. Every day's papers thrust illustrations of these truths before the world, in relation even to those essential functions which we have no alternative but to devolve on the State. The ill-working of the appliances for national protection and individual protection is a ceaseless scandal.

Army-administration is exemplified by the retention of a royal duke as commander-in-chief, by the multiplicity of generals made in satisfaction of class-interests, by promotion that is only in small measure determined by merit. It is again exemplified by keeping our own officers in ignorance of improvements which foreign officers are allowed to see; and by the repeated leaking out of secrets through *employés* in the arsenals. And it is yet again exemplified by the astounding disclosures respecting stores—bayonets that bend, swords that break, cartridges that jamb, shells of wrong sizes; so that, as said by the Inquiry Commission of 1887:—"The present system is directed to no definite object; it is regulated by no definite rules; it makes no regular stated provision, either for the proper supply and manufacture of warlike stores, or for enforcing the responsibility of those who fail to make them properly, or for ascertaining the fact that they are made improperly."

That the Navy keeps the Army in countenance, complaint, inquiry, and exposure, continually remind us. All remember the story of the naval evolutions on the occasion of the Jubilee, when, without the stress of a sea-fight, more than a dozen vessels, great and small, came to grief in one way or other—collisions, explosions, breakdowns of engines, and so forth. And then there were the smaller but equally significant disasters which, in the same year, attended the cruise of 24 torpedo boats down channel and back; during which 8 of the 24 were more or less disabled. Vessels that will not steer, guns that burst, ships that run aground, are

frequently reported; and then, furnishing a significant contrast, when a first-class man-of-war, the Sultan, after running on a rock, sinks and is regarded by the Admiralty as lost, it is raised again and saved by a private company. To which add that the report concerning Admiralty-administration issued in March, 1887, showed that "such management as is here disclosed would bring any commercial firm into the Bankruptcy Court in a few months."

Similarly is it with the making and administration of laws. So constant is the exposure of folly and failure, that the public sense of them is seared. In parliamentary procedure we meet with the extremes of utter recklessness and irrational carefulness: now a bill is hurried through all its stages without debate, and now, after careful consideration has delayed its enactment, it is dropped and has to pass through the whole process again next session. While we see the amending and re-amending of clauses aimed to meet every contingency, we see the whole Act when passed thrown on to the immense chaotic heap of preceding legislation, making its confusion worse confounded. Complaint and denunciation lead to nothing. Here, in 1867, is the report of a commission formed of leading lawyers and statesmen—Cranworth, Westbury, Cairns, and others—urging the need for a digest as a preparation for a code; and urging that it is a national duty to provide citizens with a means of knowing the laws they have to conform to. Yet, though the question has been occasionally raised, nothing has been done—nothing, that is, by the State, but something by private individuals: Chitty's *Equity Index* and Sir James Stephen's *Digest of the Criminal Law*, have to some extent taught legislators what has been done by themselves and their predecessors. Then there is the fact, to the monstrosity of which custom blinds us, that even lawyers do not know what the bearings of a new Act are until judges have made decisions under it; while the judges themselves exclaim against the bungling

legislation they have to interpret: one judge saying of a clause that he "did not believe its meaning was comprehended either by the draughtsman who drew it" or "the parliament that adopted it," and another declaring that "it was impossible for human skill to find words more calculated to puzzle everybody." As a natural consequence we have every day appeals and again appeals—decisions being reversed and re-reversed, and the poorer litigants being compelled to submit by the wealthier ones, who can ruin them by going from court to court. The incredible disproportion of sentences, too, is a daily scandal. Here a hungry harvester is sent to prison for eating a pennyworth of the field-beans he was cutting, as happened at Faversham; and there a rich man who has committed a violent assault has to pay a fine which to him is trivial. Still more disgraceful is the treatment of men charged with unproved offences, and men who have been proved innocent: these being kept in prison for months before trials which show them to be guiltless, and those, after bearing long punishments before their innocence is shown, being granted "free pardons" and no compensation for inflicted sufferings and damaged lives.

Even the smallest daily transaction—the paying of a cabman or the purchase of a neck-tie—serves to remind one of official bungling; for how can it be better shown than by the coinage? In this we have frequent changes where changes are undesirable. We have mixed systems: decimal, duodecimal, and nondescript. Until recently we had two scarcely-distinguishable pieces for threepence and fourpence; we had, four years since, the Jubilee-sixpence withdrawn because it simulated a half-sovereign so exactly that it needed only to be gilt to pass for one. We have the lately-introduced four-shilling piece, only by deliberate inspection distinguishable from a five-shilling piece. In most cases there lacks the one needful piece of information—the declared value of the coin. And once more there

are no proper adjustments to the demands : everywhere there is an unsatisfied cry for small change.

So that the inference which the general laws of organization compel us to draw, is inductively verified in respect of the three all-essential departments of the State, as well as in a subordinate department, by evidence which every day increases.

§ 127. There are two leading implications of this general truth above exhibited in the abstract, and above exemplified in the concrete.

If people at large tolerate the extravagance, the stupidity, the carelessness, the obstructiveness, daily exemplified in the military, naval, and legal administrations ; much more will they tolerate them when exemplified in departments which are neither so vitally important nor occupy so large a space in the public mind. The vices of officialism must exist throughout public organizations of every kind, and may be expected to go to greater extremes where the necessity for checking them is less pressing. Not only, then, may we rationally conclude that when, beyond its essential functions, the State undertakes non-essential functions, it will perform these equally ill, but we may rationally conclude that its performance of them will be still worse.

The second implication is that the ill-performance of essential functions is itself made more extreme by the absorption of attention and energy in discharging non-essential functions. It cannot but be that the power to conduct a few businesses is diminished by the addition of many other businesses to be conducted ; and it cannot but be that when public criticism is directed to shortcomings of many kinds it must be less efficient than when directed to shortcomings of few kinds. If, instead of being almost wholly occupied with other things, Parliament were occupied almost wholly with the administrations for external protection and internal protection, no one will dare to deny

that these would be more efficient than now; and no one will dare to assert that, if discussions on the platform and in the press were almost wholly about these administrations instead of being almost wholly about other things, the public would tolerate such inefficiency of them as it now does.

Thus whether we wish to avoid the multiplication of ill-performed functions, or whether we wish to have the essential functions better performed, the requirement is the same—limitation. Specialization of functions directly improves the discharge of each function by adjusting the organ to it, and indirectly improves the discharge of other functions by permitting each to acquire an appropriate organ.

§ 128. The foregoing reasons for concluding that in the administration of social affairs the just is also the politic, will weigh but little with the majority. The beliefs in natural law and the universality of causation are not very strong even in the scientific world when vital phenomena are in question; and they are very feeble in the outer world. Only such of the above arguments as are based on facts daily published are likely to tell; and the adequacy of even these will be denied by most.

It will, therefore, be needful to reinforce them by others drawn from evidences directly relevant. Let us devote a chapter to these.

## CHAPTER XXVIII.

### THE LIMITS OF STATE-DUTIES *CONTINUED*.

§ 129. "In simple matters direct perception cannot be trusted: to insure trustworthy conclusions we must use some mode of measurement by which the imperfections of the senses may be corrected. Contrariwise, in complex matters unaided contemplation suffices: we can adequately sum up and balance the evidences without reference to any general truth."

Does anyone smile at this absurd proposition? Why should he do so? The probabilities are ten to one that, under a disguised form, this proposition forms part of his tacitly-accepted creed. If he hears of an artizan who pooh-poohs thermometers, and says he can tell better by his hand what is the right temperature for the liquid he uses, the reader, knowing that the sensation of heat or cold which anything yields varies greatly according to the temperature of the hand, sees how absurd is this self-confidence resulting from want of knowledge. But he sees no absurdity in the attempt to reach without any guiding principle a right conclusion respecting the consequences of some action affecting in multitudinous ways millions of people: here there needs no kind of meter by which to test the correctness of direct impressions. If, for instance, the question is whether he shall advocate the system of payment by results in State-aided schools, he thinks it

obvious that the stimulus given by it to teachers cannot fail to be beneficial to pupils. It does not occur to him that perhaps the induced pressure will be too great; that perhaps it will foster a mechanical receptivity; that mere cram may end in ultimate aversion to learning; that there may be prompted special attention to clever pupils whose success will profit the teacher, and consequent neglect of dull ones; that a system which values knowledge for gaining money-grants, and not for its own sake, is unlikely to produce healthy intelligence; and that even the teachers under such a system are likely to become mere machines. Seeing, as he thinks quite clearly, the immediate results, and either not perceiving at all the remote results or making light of them, he has no doubt that the plan will be a good one. And then when, after some 20 years the effects of the plan are found to be so injurious that it is abandoned, after having damaged the healths of millions of children and inflicted an immeasurable amount of physical and mental pain, he is not in the least the wiser for his disastrous misjudgment, but is ready next day to decide about some newly proposed scheme in the same way—by simple inspection and balancing probabilities. That is, as above said, though the aid of general principles is thought needful in simple matters, it is thought not needful in the most complex matters.

And yet a minute's thought should make it clear to every one not only that these unguided judgments are very likely to be wrong, but also that there must exist some guidance by which correct judgments may be reached. For what can be more nonsensical than the belief that there is no natural causation in social affairs? And how can anyone evade the charge of folly who, admitting that there must be natural causation, devises laws which take no account of it? As argued in a preceding chapter, if there is no causation then one law is as good as another, and law-making ridiculous. If one law is not as good as

another, it must be that on men socially aggregated one law will operate more beneficially than another; and its more beneficial operation implies some adaptation to the natures of the men and their modes of co-operation. Concerning these there must exist some general truths, some deepest uniformities; and the ultimate effect of any legislation must depend on its recognition of such uniformities and its subordination to them. How, then, can there be anything more senseless than to proceed before inquiring what they are?

§ 130. Pursuit of happiness without regard to the conditions by fulfilment of which happiness is to be achieved, is foolish socially as well as individually—nay, indeed, more foolish; since the evils of disregarding the conditions are not unfrequently evaded by the individual, but, in consequence of the averaging of effects among many individuals, cannot be evaded by the society.

Estimating the probable results of each act apart from any general sanction other than the pursuit of happiness, is the method pursued by every criminal. He thinks the chances are in favour of gaining pleasures and escaping pains. Ignoring those considerations of equity which should restrain him, he contemplates the proximate results and not the ultimate results; and, in respect of the proximate results, he is occasionally right: he has the gratifications which his ill-gotten gains bring and does not suffer the punishment. But in the long run it turns out that the evils are greater than the benefits; partly because he does not always avoid the penalties, and partly because the kind of nature fostered by his actions is incapable of the higher kinds of happiness.

The policy thus pursued with egoistic ends by the law-breaker is pursued with altruistic ends by the expediency politician. He, too, not for his own good, but, as he thinks, for the good of others, makes calculations of



probable pleasures and pains ; and, ignoring the dictates of pure equity, adopts such methods as he thinks will achieve the one and avoid the other. If it is a question of providing books and newspapers in so-called free libraries, he contemplates results which he makes no doubt will be beneficial ; and practically ignores the inquiry whether it is just to take by force the money of A, B, and C, to pay for the gratifications of D, E, and F. Should his aim be the repression of drunkenness and its evils, he thinks exclusively of these ends, and, determined to impose his own beliefs on others, tries to restrict men's freedom of exchange and to abolish businesses in which capital has been invested with legal and social assent. Thus, as above said, the altruistic aggressor, like the egoistic aggressor, disregards all other guidance than that of estimated proximate results—is not restrained by the thought that his acts break the first principle of harmonious social life.

Clearly this empirical utilitarianism, which makes happiness the immediate aim, stands in contrast with the rational utilitarianism, which aims at fulfilment of the conditions to happiness.

§ 131. The upholders of political empiricism cannot object if we bring their own method to the empirical test. If, ignoring abstract principles, we are to be guided by results, either as calculated beforehand or as ascertained by experience, then, clearly, we cannot do better than judge in like manner of the empirical method itself. Let us do this.

In a discussion on socialistic legislation which took place in the House of Lords on May 19, 1890, our Prime Minister said—

“ We no more ask what is the derivation or philosophical extraction of a proposal before we adopt it than a wise man would ask the character of a footman's grandfather before engaging the footman.”

After thus ridiculing the supposition that there are any general laws of social life to which legislation should con-

form, he went on to say—"we ought first to discuss every subject on its own merits." And Lord Salisbury's method thus distinctly avowed, is the method universally followed by politicians who call themselves practical and sneer at "abstract principles."

But unhappily for them their method is the method which has been followed by those legislators who, throughout past thousands of years, have increased human miseries in multitudinous ways and immeasurable degrees by mischievous laws. Regard for "the merits of the case" guided Diocletian when he fixed the prices of articles and wages of workers, and similarly guided rulers of all European nations who, century after century, in innumerable cases, have decided how much commodity shall be given for so much money, and in our own country guided those who, after the Black Death, framed the Statute of Labourers, and presently caused the peasant revolt. The countless Acts which, here and abroad, prescribed qualities and modes of manufacture, and appointed searchers to see that things were made as directed, were similarly prompted by consideration of "the merits of the case": evils existed which it was obviously needful to prevent. Doubtless, too, the orders to farmers respecting the proportions of their arable and pasture lands, the times for shearing sheep, the number of horses to a plough, as well as those which insisted on certain crops and prohibited others, had "the merits of the case" in view. Similarly was it with the bounties on the exports of some commodities and the restrictions on the imports of others; and similarly was it with the penalties on forestallers, and the treatment of usury as a crime. Each one of those multitudinous regulations enforced by swarms of officials, which in France nearly strangled industry, and was a part-cause of the French revolution, seemed to those who established it, a regulation which "the merits of the case" called for; and no less did there seem to be called for the numberless sumptuary laws which, generation

after generation, kings and their ministers tried to enforce. Out of the 14,000 odd Acts which, in our own country, have been repealed, from the date of the Statute of Merton down to 1872—some because of consolidations, some because they proved futile, some because they were obsolete—how many have been repealed because they were mischievous? Shall we say one-half? Shall we say one-fourth? Shall we say less than one-fourth? Suppose that only 3000 of these Acts were abolished after proved injuries had been caused, which is a low estimate. What shall we say of these 3000 Acts which have been hindering human happiness and increasing human misery; now for years, now for generations, now for centuries?

See then the verdict. If we are to be led by observation and experience, what do observation and experience say respecting this method of guidance? Do they not show beyond all possibility of denial that it has proved a gigantic failure? "No:" may perhaps be the reply—"You forget that though numerous laws have been repealed after doing mischief, numerous others have not been repealed but have proved beneficial." Very true; but this reply is no less unfortunate than the original allegation. For which are the successful laws? They are the laws which conform to those fundamental principles which practical politicians pooh-pooh. They are the laws countenanced by that social philosophy of which Lord Salisbury speaks so contemptuously. They are the laws which recognize and enforce the various corollaries from the formula of justice. For, as we have seen in a number of preceding chapters, social evolution has been accompanied by the progressive establishment of these ethically-enjoined laws. So that the evidence yields a double condemnation of the method of empirical utilitarianism. Facts conclusively prove the failure of that method and the success of the opposite method.

But now observe that neither Lord Salisbury nor any

adherent of the same political creed, pursues with consistency this method of judging by "the merits of the case." Contrariwise, throughout by far the most important classes of cases they pursue the method they ridicule. Bring them to the test, and they will emphatically repudiate guidance by "the merits of the case," when the case is one in which the issues are simple and clear.

In explanation of the frequent escapes of thieves in public thoroughfares, a letter to one of the daily papers narrated how, after witnessing a theft, the writer asked a man who was passed by the thief when running away, why he did not stop him. The reply was—"I was not going to stop the poor fellow. I expect the things he stole would do him more good than the man he stole them from." Here, consideration of "the merits of the case" was the avowed way of judging: the relative degrees of happiness of the thief and the person robbed were estimated and the decision justified the theft. "But the rights of property must be maintained," Lord Salisbury would reply. "Society would dissolve if men were allowed to take other men's goods on the plea that they had more need of them than the owners." Just so. But this is not judging by "the merits of the case"; it is judging by conformity to a general principle. That philosophy at which Lord Salisbury sneers, shows that social co-operation can be effectively and harmoniously carried on, only if the relations between efforts and benefits are maintained intact. And, as we have seen, it is the same with all those laws the enforcement of which constitutes the administration of justice, and which it is part of Lord Salisbury's essential business to uphold: all of them are embodied corollaries from the philosophy he scorns.

The essential difference is that though the lessons of thousands of years show that society improves in proportion as there is better and better conformity to these corollaries; and though it is to be inferred that it will be best to conform to them in each new case which arises; Lord Salisbury thinks

that nonconformity to them is proper if a majority decides that "the merits of the case" demand it.

§ 132. That anyone who has before him the facts daily set forth in newspapers, should suppose that when measures are taken to meet "the merits of the case," the consequences can be shut up within the limits of the case, is astonishing. That, after seeing how a change set up in some part of a society initiates other changes unforeseen, and these again others, anyone should think he is going to produce by Act of Parliament certain effects intended and no unintended effects, shows how possible it is to go on reading day by day without getting wiser. In any aggregate formed of mutually-dependent parts, there comes into play what I have elsewhere described as fructifying causation. The effects of any cause become themselves causes, often more important than their parent; and their effects, again, become other causes. What happened when a great rise in the price of coals occurred some years ago? The expenditure of every household was affected, and the poor were especially pinched. Every factory was taxed, and either the wages lowered or the price of the commodity raised. The smelting of iron became more expensive, and the cost of all those things, such as railways and engines, into which iron enters largely, was increased. The ability to compete with various classes of foreign manufactures was diminished; fewer vessels were chartered for carrying products abroad; and the ship-building trade flagged with all the dependent trades. Similarly throughout in directions too numerous to follow. See, again, what has resulted from the late dock-strike—or rather, from the ill-judged sympathy which, guided by "the merits of the case," led public and police to tolerate the violence employed by dockers to achieve their ends. Successful use in this case of assaulting, bullying, and boycotting, prompted elsewhere strikes enforced by like means—at Southampton, Tilbury, Glasgow,

Nottingham, &c. Other classes followed the lead—painters, leather-workers, cabinet-makers, scale-makers, bakers, carpenters, printers, sandwich-men, &c. And there were prompted like movements, still more unscrupulous, in Australia and America. Then, as secondary results, came the stoppages and perturbations of businesses, and through them of connected businesses, with consequent decrease of employment. Among tertiary results we have encouragement of the delusion that it only requires union for workers to get what terms they please, prompting suicidal demands. And, among still remoter results, we have the urging on of meddling legislation and the fostering of socialistic ideas.

The indirect effects, multiplying and again multiplying, are often in the long run the reverse of those counted on. Past and present alike supply instances. Among those from the past may be named the Act of 8th Elizabeth, which, to protect the inhabitants of Shrewsbury against strangers, forbade all save freemen to trade in Welsh cottons, and which, six years afterwards, the Shrewsbury people begged should be repealed, because “of the impoverishing and undoing of the poor artificers and others, at whose suit the said Act was procured”: an experience paralleled in later days by that of the Spitalfields weavers. Then of striking examples which present times furnish, we have the results of certain laws in the western States of America. In his message to the Col. Legislature, January 8, 1885, Governor Grant says — “These laws were designed to exterminate the hawks, wolves, and loco-weeds . . . the hawks and wolves have steadily increased under the auspices of these bounty laws”: that is, as measured by the amount paid. Kindred results have been experienced in India.

From the times when vagrants swarmed round monasteries to the Old Poor-Law days when many parishes were nearly swamped by paupers, experience has continually shown that measures guided by the apparent “merits of the case,”

have done exactly the reverse of that which was proposed to be done—have increased distress instead of diminished it. And recent facts have continued to illustrate the same thing. The Chairman of the Bradfield Union, writing to the *Spectator* of April 19th, 1890, points out that seventeen years' administration led by principle instead of impulse, had reduced the indoor paupers from 259 to 100, and the out-door paupers from 999 to 42: the conviction with which he ends his letter being that "the majority of paupers are created by out-relief." And this warning against being guided by the seeming necessities, has been since emphasized by Mr. Arnold White, writing from Tennyson Settlement, Cape Colony, to the *Spectator* for January 10, 1891, in which he says:—"Any colonising scheme that does not distinctly include death to the wilfully idle if they choose to die, is predestined to failure. . . . the lesson has been burned into me by long and bitter years of hard-earned experience." Which is to say that if, in respect of charity, we let ourselves be swayed by the apparent "merits of the case," we shall eventually exacerbate the evils instead of curing them.

The judgments of the legislator who derides philosophy, and thinks it needful only to look at the facts before him, are equally respectable with those of the labourer who joins his fellows in vociferous advocacy of some public undertaking, for the reason that it will give employment—thus looking, as he does, at "the merits of the case" as directly to be anticipated, and thinking nothing of the remoter consequences: not asking what will be the effect of expending capital in doing something that will not bring adequate returns; not asking what undertakings, probably more remunerative and therefore more useful, the capital would have been otherwise devoted to; not asking what other traders and artizans and labourers would then have had employment. For though the legislator may contemplate effects somewhat more remote, yet he is

practically as far as the labourer from conceiving the ultimate waves of change, reverberating and re-reverberating throughout society.

§ 133. Which is the more misleading, belief without evidence, or refusal to believe in presence of overwhelming evidence? If there is an irrational faith which persists without any facts to support it, there is an irrational lack of faith which persists spite of the accumulation of facts which should produce it; and we may doubt whether the last does not lead to worse results than the first.

The average legislator, equally with the average citizen, has no faith whatever in the beneficent working of social forces, notwithstanding the almost infinite illustrations of this beneficent working. He persists in thinking of a society as a manufacture and not as a growth: blind to the fact that the vast and complex organization by which its life is carried on, has resulted from the spontaneous co-operations of men pursuing their private ends. Though, when he asks how the surface of the Earth has been cleared and made fertile, how towns have grown up, how manufactures of all kinds have arisen, how the arts have been developed, how knowledge has been accumulated, how literature has been produced, he is forced to recognize the fact that none of these are of governmental origin, but have many of them suffered from governmental obstruction; yet, ignoring all this, he assumes that if a good is to be achieved or an evil prevented, Parliament must be invoked. He has unlimited faith in the agency which has achieved multitudinous failures, and has no faith in the agency which has achieved multitudinous successes.

Of the various feelings which move men to action, each class has its part in producing social structures and functions. There are first the egoistic feelings, most powerful and most active, the effects of which, as developing the arrangements for production and distribution, have



been above adverted to, and which, whenever there is a new sphere to be profitably occupied, are quick to cause new growths. From the cutting of a Suez Canal and the building of a Forth Bridge, to the insurance of ships, houses, lives, crops, windows, the exploration of unknown regions, the conducting of travellers' excursions, down to automatic supply-boxes at railway-stations and the loan of opera-glasses at theatres, private enterprise is ubiquitous and infinitely varied in form; and when repressed by State-agency in one direction buds out in another. Reminding us of the way in which, in Charles II's time, there was commenced in London a local penny-post, which was suppressed by the government, we have, in the Boy Messengers' Company and its attempted suppression, illustrations of the efficiency of private enterprise and the obstructiveness of officialism. And then, if there needs to add a case showing the superiority of spontaneously-formed agencies we have it in the American Express Companies, of which one has 7000 agencies, has its own express trains, delivers 25,000,000 parcels annually, is employed by the government, has a money-order system which is replacing that of the Post Office, and has now extended its business to Europe, India, Africa, South America, and Polynesia.

Beyond those egoistic feelings by the combined forces of which the sustaining organization of every society has been developed, there are in men the ego-altruistic and altruistic feelings—the love of approbation and the sympathy—which prompt them to various other single and combined actions, and generate various other institutions. It is needless to go back into the past to exemplify the operation of these in the endowments for charitable and educational purposes. The present day furnishes ample evidence of their potency. Here, and still more in America, we have vast sums left for founding colleges, and, in more numerous cases, sums for endowing professorial chairs and scholarships; we have gifts of immense sums to build and fill

public libraries; we have parks and gardens given to towns by private individuals; we have museums bequeathed to the nation. In *The Standard* for April 11, 1890, is given an account showing that the bequests to hospitals, asylums, missions, societies, for 1889 amounted to £1,080,000; and that for the first quarter of 1890 they amounted to £300,000. Then, in *The Nineteenth Century*, for January, 1890, Mr. Huish has pointed out that during the last few years, the gifts of private individuals for the support of art, have been respectively, for buildings £347,500, and in pictures or money £559,000; to which may be added the more recent donation of £80,000 for a gallery of British Art.

Nor must we forget the daily activities of multitudinous philanthropic people in urging one or other movement for the benefit of fellow-citizens. Countless societies, with an enormous aggregate revenue, are formed for unselfish purposes: all good in design if not in result. And the motives, largely if not wholly altruistic, which prompt the establishment and working of these, far from showing any decrease of strength, become continually stronger.

Surely, then, if these forces have already done so much and are continually doing more, their future efficiency may be counted upon. And it may be reasonably inferred that they will do many things which we do not yet see how to do.

§ 134. So that even if we disregard ethical restraints, and even if we ignore the inferences to be drawn from that progressing specialization which societies show us, we still find strong reasons for holding that State-functions should be restricted rather than extended.

Extension of them in pursuit of this or that promised benefit, has all along proved disastrous. The histories of all nations are alike in exhibiting the enormous evils that have been produced by legislation guided merely by "the

merits of the case;" while they unite in proving the success of legislation which has been guided by considerations of equity.

Evidence thrust before us every morning shows throughout the body politic a fructifying causation so involved that not even the highest intelligence can anticipate the aggregate effects. The practical politician so-called, who thinks that the influences of his measure are to be shut up within the limits of the field he contemplates, is one of the wildest of theorists.

And then, while his faith in the method of achieving artificially this or that end, is continually discredited by failures to work the effects intended and by working unintended effects, he shows no faith in those natural forces which in the past have done much, are at present doing more, and in the future may be expected to do most.

## CHAPTER XXIX.

### THE LIMITS OF STATE-DUTIES *CONCLUDED*.

§ 135. Of the many reasons for restricting the range of governmental actions, the strongest remains to be named. The end which the statesman should keep in view as higher than all other ends, is the formation of character. And if there is entertained a right conception of the character which should be formed, and of the means by which it may be formed, the exclusion of multiplied State-agencies is necessarily implied.

“How so?” will doubtless be the exclamation of many. “Is not the formation of character the end to which much of the legislation we advocate is directed? Do we not contend that an all-important part of the State’s business is the making of good citizens? and are not our school-systems, our free-libraries, our sanitary arrangements, our gymnasia, &c., devised with the view of improving their natures?”

To this interrogative reply, uttered with an air of astonishment and an implied conviction that nothing remains to be said, the answer is that everything depends on the goodness of the ideal entertained and the appropriateness of the appliances for realizing it; and that both of them are radically wrong.

These paragraphs sufficiently indicate the antagonist

views to be here discussed. Let us now enter on the discussion of them systematically.

§ 136. Upwards from hordes of savages to civilized nations, countless examples show that to make an efficient warrior preparation is needed. Practice in the use of weapons begins in boyhood; and throughout youth the ambition is to be a good marksman with the bow and arrow, to throw the javelin or the boomerang with force and precision, and to become an adept in defence as well as in attack. At the same time speed and agility are effectually cultivated, and there are trials of strength. More relevant still to the end in view comes the discipline in endurance; sometimes going to the extent of submission to torture. In brief, each male of the tribe is so educated as to fit him for the purposes of the tribe—to fit him for helping it in maintaining its existence, or subjugating its neighbours, or both. Though not a State-education in the modern sense, the education is one prescribed by custom and enforced by public opinion. That it is the business of the society to mould the individual is asserted tacitly if not openly.

With that social progress which forms larger communities regularly governed, there goes a further development of State-education. Not only are there now deliberately cultivated the needful strength, skill, and endurance, but there is cultivated that subordination which is required for the performance of military evolutions, and that further subordination to leaders and to rulers without which the combined forces cannot be used in the desired ways. It is needless to do more than name Greece, and especially Sparta, as exemplifying this phase.

With this practice went an appropriate theory. From the belief that the individual belonged neither to himself nor to his family but to his city, there naturally grew up the doctrine that it was the business of his city to mould him into fitness for its purposes. Alike in Plato and in

Aristotle we have elaborate methods proposed for the due preparation of children and youths for citizenship, and an unhesitating assumption that in a good State, education must be a public business.

Evidently, then, while war is the chief business of life, the training of individuals by governmental agency after a pattern adapted to successful fighting, is a normal accompaniment. In this case experience furnishes a tolerably correct ideal to be aimed at, and guidance in the choice of methods productive of the ideal. All free men have to be made as much as may be into military machines, automatically obedient to orders; and a unifying discipline is required to form them. Moreover, just as in the militant type the coercive system of rule which regimentation involves, spreads from the fighting part throughout the whole of the ancillary parts which support it; so, there naturally establishes itself the theory that not soldiers only, but all other members of the community, should be moulded by the government into fitness for their functions.

§ 137. Not recognizing the fundamental distinction between a society which, having fighting for its chief business, makes sustentation subordinate, and a society which, having sustentation for its chief business, makes fighting subordinate, there are many who assume that a disciplinary policy appropriate to the first is appropriate to the last also. But the relations of the individual to the State are in the two cases entirely different. Unlike the Greek, who, not owning himself was owned by his city, the Englishman is not in any appreciable degree owned by his nation, but in a very positive way owns himself. Though, if of fit age, he may on great emergency be taken possession of and made to help in defending his country; yet this contingency qualifies to but small extent the private possession of his body and the self-directing of his actions.

Throughout a series of chapters we saw that the

progressive establishment by law of those rights which are deduced by ethics, made good the free use of himself by each individual, not only against other individuals but, in many respects, against the State: the State, while defending him against the aggressions of others, has in various directions ceased to aggress upon him itself. And it is an obvious corollary that in a state of permanent peace this change of relation would be complete.

How does this conclusion bear on the question at issue? The implication is that whereas the individual had to be moulded by the society to suit its purposes, the society has now to be moulded by the individual to suit his purposes. Instead of a solidified body-politic, wielding masses of its units in combined action, the society, losing its coercive organization, and holding together its units with no other bonds than are needed for peaceful co-operation, becomes simply a medium for their activities. Once more let me emphasize the truth that since a society in its corporate capacity is not sentient, and since the sentiency dwells exclusively in its units, the sole reason for subordinating the sentient lives of its units to the unsentient life of the society, is that while militancy continues the sentient lives of its units are thus best preserved; and this reason lapses partially as militancy declines, and wholly as industrialism becomes complete. The claim of the society to discipline its citizens disappears. There remains no power which may properly prescribe the form which individual life shall assume.

“But surely the society in its corporate capacity, guided by the combined intelligences of its best members, may with advantage frame a conception of an individual nature best fitted for harmonious industrial life, and of the discipline calculated to produce such a nature?” In this plea there is tacitly assumed the right of the community through its agents to impose its scheme—an assumed right quite inconsistent with the conclusions drawn in foregoing

chapters. But not here dwelling on this, let us ask what fitness the community has for deciding on the character to be desired, and for devising means likely to create it.

§ 138. Whether the chosen ideal of a citizen, and the chosen process for producing him, be good or bad, the choice inevitably has three implications, any one of which condemns it.

The system must work towards uniformity. If the measures taken have any effect at all, the effect must in part be that of causing some likeness among the individuals: to deny this is to deny that the process of moulding is operative. But in so far as uniformity results advance is retarded. Everyone who has studied the order of nature knows that without variety there can be no progress—knows that, in the absence of variety, life would never have evolved at all. The inevitable implication is that further progress must be hindered if the genesis of variety is checked.

Another concomitant must be the production of a passive receptivity of whatever form the State decides to impress. Whether submissiveness be or be not part of the nature which the incorporated society proposes to give its units, it cannot enforce its plans without either finding or creating submissiveness. Whether avowedly or not, part of the desired character must be readiness in each citizen to submit, or make his children submit, to a discipline which some or many citizens determine to impose. There may be men who think it a trait of high humanity thus to deliver over the formation of its nature to the will of an aggregate mostly formed of inferior units. But with such we will not argue.

One further necessary implication is that either there exists no natural process by which citizens are in course of being moulded, or else that this natural process should be superseded by an artificial one. To assert that there is no



natural process is to assert that, unlike all other beings, which tend ever to become adapted to their environments, the human being does not tend to become adapted to his environment—does not tend to undergo such changes as fit him for carrying on the life which circumstances require him to lead. Anyone who says this must say that the varieties of mankind have arisen without cause; or else have been caused by governmental action. Anyone who does not say this must admit that men are in course of being naturally adjusted to the requirements of a developed social state; and if he admits this, he will hesitate before he asserts that they may be better adjusted artificially.

§ 139. Let us pass now from these most abstract aspects of the matter to more concrete aspects.

It is decided to create citizens having forms fit for the life of their society. Whence must the conception of a fit form be derived? Men inherit not only the physical and mental constitutions of their ancestors, but also, in the main, their ideas and beliefs. The current conception of a desirable citizen must therefore be a product of the past, slightly modified by the present; and the proposal is that past and present shall impose their conception on the future. Anyone who takes an impersonal view of the matter can scarcely fail to see in this a repetition, in another sphere, of follies committed in every age by every people in respect of religious beliefs. In all places and in all times, the average man holds that the creed in which he has been brought is the only true creed. Though it must be manifest to him that necessarily in all cases but one, such beliefs, held with confidence equal to that which he feels, are false; yet, like each of the others, he is certain that his belief is the exception. A confidence no less absurd, is shown by those who would impose on the future their ideal citizen. That conceived type which the needs of past and present times have generated, they do

not doubt would be a type appropriate for times to come. Yet it needs but to go back to the remote past, when industrial life was held contemptible and virtue meant fortitude, valour, bravery; or to the less remote past when noble meant high-born while labourer and villein were equivalents; or to the time when abject submission of each grade to the grade above was thought the primary duty; or to the time when the good citizen of every rank was held bound to accept humbly the appointed creed; to see that the characters supposed to be proper for men were unlike the characters we now suppose proper for them. Nevertheless, the not-very-wise representatives of electors who are mostly ignorant, are prepared, with papal assumption, to settle the form of a desirable human nature, and to shape the coming generation into that form.

While they are thus confident about the thing to be done, they are no less confident about the way to do it; though in the last case as in the first, the past proves to them how utter has been the failure of the methods century after century pursued. Throughout a Christendom full of churches and priests, full of pious books, full of observances directed to fostering the religion of love, encouraging mercy and insisting on forgiveness, we have an aggressiveness and a revengefulness such as savages have everywhere shown. And from people who daily read their bibles, attend early services, and appoint weeks of prayer, there are sent out messengers of peace to inferior races, who are forthwith ousted from their lands by filibustering expeditions authorized in Downing Street; while those who resist are treated as "rebels," the deaths they inflict in retaliation are called "murders," and the process of subduing them is named "pacification."

At the same time that we thus find good reason to reject the artificial method of moulding citizens as wrong in respect alike of end and means, we have good reason to

put faith in the natural method—the spontaneous adaptation of citizens to social life.

§ 140. The organic world at large is made up of illustrations, infinite in number and variety, of the truth that by direct or indirect processes the faculties of each kind of creature become adjusted to the needs of its life; and further, that the exercise of each adjusted faculty becomes a source of gratification. In the normal order not only does there arise an agent for each duty, but consciousness is made up of the more or less pleasurable feelings which accompany the exercise of these agents. Further, the implication is that where the harmony has been deranged, it gradually re-establishes itself—that where change of circumstances has put the powers and requirements out of agreement, they slowly, either by survival of the fittest or by the inherited effects of use and disuse, or by both, come into agreement again.

This law, holding of human beings among others, implies that the nature which we inherit from an uncivilized past, and which is still very imperfectly fitted to the partially-civilized present, will, if allowed to do so, slowly adjust itself to the requirements of a fully-civilized future. And a further implication is that the various faculties, tastes, abilities, gradually established, will have for their concomitants the satisfactions felt in discharging the various duties social life entails. Already there has been gained a considerable amount of the needful capacity for work, which savages have not; already the power of orderly co-operation under voluntary agreement has been developed; already such amounts of self-restraint have been acquired that most men carry on their lives without much impeding one another; already the altruistic interests felt by citizens in social affairs at large, are such as prompt efforts, individual and spontaneously combined, to achieve public ends; and

already men's sympathies have become active enough to generate multitudinous philanthropic agencies—too multitudinous in fact. And if, in the course of these few thousand years, the discipline of social life has done so much, it is folly to suppose that it cannot do more—folly to suppose that it will not in course of time do all that has to be done.

A further truth remains. It is impossible for artificial moulding to do that which natural moulding does. For the very essence of the process as spontaneously carried on, is that each faculty acquires fitness for its function by performing its function; and if its function is performed for it by a substituted agency, none of the required adjustment of nature takes place; but the nature becomes deformed to fit the artificial arrangements instead of the natural arrangements. More than this: it has to be depleted and dwarfed, for the support of the substituted agencies. Not only does there result the incapable nature, the distorted nature, and the nature which misses the gratifications of desired achievement; but that the superintending instrumentalities may be sustained, the sustentation of those who are superintended is diminished: their lives are undermined and their adaptation in another way impeded.

Again, then, let me emphasize the fundamental distinction. While war is the business of life, the entailed compulsory co-operation implies moulding of the units by the aggregate to serve its purposes; but when there comes to predominate the voluntary co-operation characterizing industrialism, the moulding has to be spontaneously achieved by self-adjustment to the life of voluntary co-operation. The adjustment cannot possibly be otherwise produced.

§ 141. And now we come round again at last to the general principle enunciated at first. All reasons for going counter to the primary law of social life prove invalid; and there is no safety but in conformity to that law.

If the political meddler could be induced to contemplate

the essential meaning of his plan, he would be paralyzed by the sense of his own temerity. He proposes to suspend, in some way or degree, that process by which all life has been evolved—to divorce conduct from consequence. While the law of life at large is to be partially broken by him, he would more especially break that form of it which results from the associated state. Traversing by his interference that principle of justice common to all living things, he would traverse more especially the principle of human justice, which requires that each shall enjoy the benefits achieved within the needful limits of action: he would re-distribute the benefits. Those results of accumulated experiences in each civilized society which, registered in laws, have, age after age, established men's rights with increasing clearness, he proposes here or there to ignore, and to trespass on the rights. And whereas in the course of centuries, the ruling powers of societies, while maintaining men's rights against one another more effectually, have also themselves receded from aggressions on those rights, the legislative schemer would invert this course, and decrease that freedom of action which has been increasing. Thus his policy, setting at nought the first principle of life at large and the first principle of social life in particular, ignores also the generalized results of observations and experiments gathered during thousands of years. And all with what warrant? All for certain reasons of apparent policy, every one of which we have found to be untrustworthy.

But why needs there any detailed refutation? What can be a more extreme absurdity than that of proposing to improve social life by breaking the fundamental law of social life?

## APPENDICES.



## APPENDIX A.

### THE KANTIAN IDEA OF RIGHTS.

THE fundamental principle enunciated in the chapter entitled "The Formula of Justice," is one which I set forth in *Social Statics: the Conditions essential to Human Happiness specified and the first of them developed*, originally published at the close of 1850. I then supposed that I was the first to recognize the law of equal freedom as being that in which justice, as variously exemplified in the concrete, is summed up in the abstract; and I continued to suppose this for more than thirty years. But in the second of two articles entitled "Mr. Herbert Spencer's Theory of Society," published by Mr. F.W. Maitland (now Downing Professor of Law at Cambridge) in *Mind*, vol. viii. (1883), pp. 508-9, it was pointed out that Kant had already enunciated, in other words, a similar doctrine. Not being able to read the German quotations given by Mr. Maitland, I was unable to test his statement. When, however, I again took up the subject, and reached the chapter on "The Formula of Justice," it became needful to ascertain definitely what were Kant's views. For some time I was defeated in my search for them. Neither in his *Theory of Ethics; or Practical Philosophy*, nor in the *Critique of Practical Reason*, both translated by Dr. T. K. Abbott, could I find anything to the purpose; and it was only after some inquiries that I became aware of a recent translation (1887) by Mr. W. Hastie, entitled *The Philosophy of Law, An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*. In this, at p. 45, I find the sentence:—"Right, therefore, comprehends the whole of the conditions under which the voluntary actions of any one Person can be harmonized in reality with the voluntary actions of every other Person,



according to a universal Law of Freedom." And then there follows this section:—

"UNIVERSAL PRINCIPLE OF RIGHT.

"Every Action is *right* which in itself, or in the maxim on which it proceeds, is such that it can co-exist along with the Freedom of the Will of each and all in action, according to a universal Law."

"If, then, my action or my condition generally can co-exist with the freedom of every other, according to a universal Law, anyone does me a wrong who hinders me in the performance of this action, or in the maintenance of this condition. For such a hindrance or obstruction cannot co-exist with Freedom according to universal Laws.

"It follows also that it cannot be demanded as a matter of Right, that this universal Principle of all maxims shall itself be adopted as my maxim, that is, that I shall make it the *maxim* of my actions. For anyone may be free, although his Freedom is entirely indifferent to me, or even if I wished in my heart to infringe it, so long as I do not actually violate that freedom by my *external action*. Ethics, however, as distinguished from Jurisprudence, imposes upon me the obligation to make the fulfilment of Right a *maxim* of my conduct.

"The universal Law of Right may then be expressed, thus: 'Act externally in such a manner that the free exercise of thy Will may be able to co-exist with the Freedom of all others, according to a universal Law.' This is undoubtedly a Law which imposes obligation upon me; but it does not at all imply and still less command that I *ought*, merely on account of this obligation, to limit my freedom to these very conditions. Reason in this connection says only that it *is* restricted thus far by its Idea, and may be likewise thus limited in fact by others; and it lays this down as a Postulate which is not capable of further proof. As the object in view is not to teach Virtue, but to explain what right *is*, thus far the Law of Right, as thus laid down, may not and should not be represented as a motive-principle of action."

These passages make it clear that Kant had arrived at a conclusion which, if not the same as my own, is closely allied to it. It is, however, worth remarking that Kant's conception, similar though it is in nature, differs both in its origin and in its form.

As shown on a preceding page, his conclusion is reached by a "search in the pure Reason for the sources of such judgments"—forms a part of the "metaphysic of morals"; whereas, as shown on pp. 67-8 of the original edition of *Social Statics*, the law of equal freedom, there shadowed forth and subsequently stated, is regarded as expressing the primary condition which must be fulfilled before the greatest happiness can be achieved by similar beings living in proximity. Kant enunciates an *a priori* requirement, contemplated as irrespective of beneficial ends; whereas I have enunciated this *a priori* requirement as one which, under the circumstances necessitated by the social state, must be conformed to for achievement of beneficial ends.

The noteworthy distinction between the forms in which the conception is presented is this. Though (on p. 56) Kant, by

saying that "there is only one innate right, the birthright of freedom," clearly recognizes the positive element in the conception of justice; yet, in the passages quoted above, the right of the individual to freedom is represented as emerging by implication from the wrongfulness of acts which aggress upon this freedom. The negative element, or obligation to respect limits, is the dominant idea; whereas in my own case the positive element—the right to freedom of action—is represented as primary; while the negative element, resulting from the limitations imposed by the presence of others, is represented as secondary. This distinction may not be without its significance; for the putting of obligation in the foreground seems natural to a social state in which political restraints are strong, while the putting of claims in the foreground seems natural to a social state in which there is a greater assertion of individuality.

## APPENDIX B.

### THE LAND-QUESTION.

THE course of Nature, "red in tooth and claw," has been, on a higher plane, the course of civilization. Through "blood and iron" small clusters of men have been consolidated into larger ones, and these again into still larger ones, until nations have been formed. This process, carried on everywhere and always by brute force, has resulted in a history of wrongs upon wrongs: savage tribes have been slowly welded together by savage means. We could not, if we tried, trace back the acts of unscrupulous violence committed during these thousands of years; and could we trace them back we could not rectify their evil results.

Land-ownership was established during this process; and if the genesis of land-ownership was full of iniquities, they were iniquities committed not by the ancestors of any one class of existing men but by the ancestors of all existing men. The remote forefathers of living Englishmen were robbers, who stole the lands of men who were themselves robbers, who behaved in like manner to the robbers who preceded them. The usurpation by the Normans, here complete and there partial, was of lands which, centuries before, had been seized, some by piratical Danes and Norsemen, and some at an earlier time by hordes of invading Frisians or old English. And then the Celtic owners, expelled or enslaved by these, had in bygone ages themselves expropriated the peoples who lived in the underground houses here and there still traceable. What would happen if we tried to restore lands inequitably taken—if Normans had to give them back to Danes and Norse and Frisians, and these again to Celts, and these again to the men who lived in caves and used flint implements? The only imaginable form of the transaction would be a restoration of Great Britain bodily to the Welsh and the Highlanders; and if the Welsh and the Highlanders

did not make a kindred restoration, it could only be on the ground that, having not only taken the land of the aborigines but killed them, they had thus justified their ownership!

The wish now expressed by many that land-ownership should be conformed to the requirements of pure equity, is in itself commendable; and is in some men prompted by conscientious feeling. One would, however, like to hear from such the demand that not only here but in the various regions we are peopling, the requirements of pure equity should be conformed to. As it is, the indignation against wrongful appropriations of land, made in the past at home, is not accompanied by any indignation against the more wrongful appropriations made at present abroad. Alike as holders of the predominant political power and as furnishing the rank and file of our armies, the masses of the people are responsible for those nefarious doings all over the world which end in the seizing of new territories and expropriation of their inhabitants. The filibustering expeditions of the old English are repeated, on a vastly larger scale, in the filibustering expeditions of the new English. Yet those who execrate ancient usurpations utter no word of protest against these far greater modern usurpations—nay, are aiders and abettors in them. Remaining as they do passive and silent while there is going on this universal land-grabbing which their votes could stop; and supplying as they do the soldiers who effect it; they are responsible for it. By deputy they are committing in this matter grosser and more numerous injustices than were committed against their forefathers.

That the masses of landless men should regard private land-ownership as having been wrongfully established, is natural; and, as we have seen, they are not without warrant. But if we entertain the thought of rectification, there arises in the first place the question—which are the wronged and which are the wrongers? Passing over the primary fact that the ancestors of existing Englishmen, landed and landless, were, as a body, men who took the land by violence from previous owners; and thinking only of the force and fraud by which certain of these ancestors obtained possession of the land while others of them lost possession; the preliminary question is—Which are the descendants of the one and of the other? It is tacitly assumed that those who now own lands are the posterity of the usurpers, and that those who now have no lands are the posterity of those whose lands were usurped. But this is far from being the case. The fact that among the nobility there are very few whose titles go back to the days when the last usurpations took place, and none to the days when there took place the original usurpations; joined with the fact that among existing land-owners there are many whose names imply artizan-ancestors;

show that we have not now to deal with descendants of those who unjustly appropriated the land. While, conversely, the numbers of the landless whose names prove that their forefathers belonged to the higher ranks (numbers which must be doubled to take account of inter-marriages with female descendants) show that among those who are now without land, many inherit the blood of the land-usurpers. Hence, that bitter feeling towards the landed which contemplation of the past generates in many of the landless, is in great measure misplaced. They are themselves to a considerable extent descendants of the sinners; while those they scowl at are to a considerable extent descendants of the sinned-against.

But granting all that is said about past inequities, and leaving aside all other obstacles in the way of an equitable re-arrangement, there is an obstacle which seems to have been overlooked. Even supposing that the English as a race gained possession of the land equitably, which they did not; and even supposing that existing land-owners are the posterity of those who spoiled their fellows, which in large part they are not; and even supposing that the existing landless are the posterity of the despoiled, which in large part they are not; there would still have to be recognized a transaction that goes far to prevent rectification of injustices. If we are to go back upon the past at all, we must go back upon the past wholly, and take account not only of that which the people at large have lost by private appropriation of land, but also that which they have received in the form of a share of the returns—we must take account, that is, of Poor-Law relief. Mr. T. Mackay, author of *The English Poor*, has kindly furnished me with the following memoranda, showing something like the total amount of this since the 43rd Elizabeth (1601) in England and Wales.

Sir G. Nicholls [History of Poor Law, appendix to Vol. II] ventures no estimate till 1688. At that date he puts the poor rate at nearly £700,000 a year. Till the beginning of this century the amounts are based more or less on estimate.

	say	3 millions.
1601-1630.		
1631-1700.	[1688 Nicholls puts at 700,000.]	30 "
1701-1720.	[1701 Nicholls puts at 900,000.]	20 "
1721-1760.	[1760 Nicholls says 1½ millions.]	40 "
1761-1775.	[1775 put at 1½ millions.]	22 "
1776-1800.	[1784 2 millions.]	50 "
1801-1812.	[1803 4 millions; 1813 6 millions.]	65 "
1813-1840.	[based on exact figures given by Sir G. Nicholls.]	170 "
1841-1890.	[based on Mulhall's Dict. of Statistics and Statistical Abstract.]	334 "
		<hr/> 734 millions. <hr/>

The above represents the amount *expended* in relief of the poor.

Under the general term "poor-rate," moneys have always been collected for other purposes—county, borough, police rates, &c. The following table shows the annual amounts of these in connexion with the annual amounts expended on the poor.

		Total levied.	Expended on poor.	Other purposes balance.
Sir G. Nicholls.	{ In 1803.	5.348.000	4.077.000	1.271.000 ?
	{ „ 1813.	8.646.841	6.656.106	1.990.735 ?
	{ „ 1853.	5.522.412	4.939.064	1.583.341 ?
		Total spent.		Sum spent.
Statistical abstract.	{ „ 1875.	12.694.208	7.488.481	5.205.727
	{ „ 1889.	15.970.126	8.366.477	7.603.649

In addition, therefore, to sums set out in the first table, there is a further sum, rising during the century from  $1\frac{1}{4}$  to  $7\frac{1}{2}$  millions per annum 'for other purposes.'

Mulhall on whom I relied for figures between 1853 and 1875 does not give "other expenditure."

Of course of the £734,000,000 given to the poorer members of the landless class during three centuries, a part has arisen from rates on houses; only such portion of which as is chargeable against ground rents, being rightly included in the sum the land has contributed. From a land-owner, who is at the same time a Queen's Counsel, frequently employed professionally to arbitrate in questions of local taxation, I have received the opinion that if, out of the total sum received by the poor, £500,000,000 is credited to the land, this will be an under-estimate. Thus even if we ignore the fact that this amount, gradually contributed, would, if otherwise gradually invested, have yielded in returns of one or other kind a far larger sum, it is manifest that against the claim of the landless may be set off a large claim of the landed—perhaps a larger claim.

For now observe that the landless have not an equitable claim to the land in its present state,—cleared, drained, fenced, fertilized, and furnished with farm-buildings, &c.,—but only to the land in its primitive state, here stony and there marshy, covered with forest, gorse, heather, &c.: this only, it is, which belongs to the community. Hence, therefore, the question arises—What is the relation between the original "prairie value" of the land, and the amount which the poorer among the landless have received during these three centuries. Probably the land-owners would contend that for the land in its primitive, unsubdued state, furnishing nothing but wild animals and wild fruits, £500,000,000 would be a high price.

When, in *Social Statics*, published in 1850, I drew from the law of equal freedom the corollary that the land could not equitably be alienated from the community, and argued that, after compensating its existing holders, it should be re-

appropriated by the community, I overlooked the foregoing considerations. Moreover, I did not clearly see what would be implied by the giving of compensation for all that value which the labour of ages has given to the land. While, as shown in Chap. XI., I adhere to the inference originally drawn, that the aggregate of men forming the community are the supreme owners of the land—an inference harmonizing with legal doctrine and daily acted upon in legislation—a fuller consideration of the matter has led me to the conclusion that individual ownership, subject to State-suzerainty, should be maintained.

Even were it possible to rectify the inequitable doings which have gone on during past thousands of years, and by some balancing of claims and counter-claims, past and present, to make a re-arrangement equitable in the abstract, the resulting state of things would be a less desirable one than the present. Setting aside all financial objections to nationalization (which of themselves negative the transaction, since, if equitably effected, it would be a losing one), it suffices to remember the inferiority of public administration to private administration, to see that ownership by the State would work ill. Under the existing system of ownership, those who manage the land, experience a direct connexion between effort and benefit; while, were it under State-ownership, those who managed it would experience no such direct connexion. The vices of officialism would inevitably entail immense evils.

## APPENDIX C.

### THE MORAL MOTIVE.

SOME months after the first five chapters of this volume appeared in *The Nineteenth Century*, the Rev. J. Llewelyn Davies published in *The Guardian* for July 16, 1890, some criticisms upon them. Such of these criticisms as concern other questions I pass over, and here limit myself to one which concerns the sentiment of duty, and the authority of that sentiment. Mr. Davies says :—

“ To the best of my knowledge, Mr. Spencer, though often challenged, has never fully explained how, with his philosophy, he can take advantage of the ordinary language and sentiment of mankind about duty. . . . I have to repeat a criticism which I offered in my former paper. Mr. Spencer seems to me to imply what he professes not to recognise. To construct the idea and sentiment of justice, he implies a law having authority over the human mind and its conduct—viz., that the well-being of the species is to be desired, and an acknowledgment by the human mind of that law, a self-justifying response to it. Whilst he confines himself to tracing natural evolution, he has no right to use the terms of duty. What can be added to the *dictum* of Kant, and how can it be confuted?—

“ If we fix our eyes simply upon the course of nature, the *ought* has no meaning whatever. It is as absurd to ask what nature ought to be as to ask what sort of properties a circle ought to have. The only question we can properly ask is, What comes to pass in nature? just as we can only ask, What actually are the properties of a circle? ”

When Mr. Spencer inveighs with genuine moral vehemence against aggression and other forms of illdoing, when he protests, for example, against “ that miserable *laissez-faire* which calmly looks on while men ruin themselves in trying to enforce by law their equitable claims ”—he is borrowing *our* thunder, he is stealing fire from heaven.”

And then, after further argument, Mr. Davies ends his letter by asking for “ some justification of the use of ethical terms by one who professes only to describe natural and necessary processes.”

As Mr. Davies forwarded to me a copy of *The Guardian* containing his letter, my reply took the form of a letter addressed



to him, which appeared in *The Guardian* for August 6. With the exception of an omitted part, relating to another matter, it ran as follows :—

Fairfield, Pewsey, Wilts, July 24, 1890.

Dear Mr. Davies—The copy of the *Guardian* has just reached me, and I have read your criticism with much interest. Would that criticisms in general were written in the same spirit!

\* \* \* \* \*

In asserting the illegitimacy of my use of the words “duty,” “ought,” “obligation,” &c., you remind me of the criticisms of Mr. Lilly. By such community as exists between you, amid your differences, you are both led to the assumption that the idea of “duty” can have no other than a super-natural origin.

This assumption implies that men’s actions are determined only by recognition of ultimate consequences, and that if recognition of ultimate consequences does not lead them to do right, they can have no motive to do right. But the great mass of men’s actions are directly prompted by their likings, without thought of remote results; and among actions thus prompted are, in many cases, those which conduce to other men’s welfare. Though, on reflection, such actions are seen to be congruous with the ends ranked as the highest, yet they are not prompted by thought of such ends.

The relation of direct to indirect motives is best seen in a familiar case. Any normally-constituted parent spends much labour and thought in furthering the welfare of his children, and daily, for many years, is impelled to do this by immediate liking—cannot bear to do otherwise. Nevertheless, while he is not impelled to do what he does by the consciousness that he *ought* to do it, if you ask the reasons for his self-sacrificing conduct he will say that he is under obligation; and if you push your inquiries to the end, you will compel him to assign the fact that if men in general did not do the like the race would disappear. Though the consciousness of obligation may serve to justify, and perhaps in a small degree to strengthen, the promptings of his natural affections, yet these are quite sufficient of themselves.

Similarly is it with the idea of obligation in respect of conduct to our fellow-men. As you must know from your personal experiences, such conduct may be effectually prompted by immediate desire, without thought of other consequence than the benefits given. And though these benefits are given from simple desire to give them, if the question be raised whether they should be given, there comes the answer that it is a duty to minister to human welfare.

You contend that my theory of moral guidance gives me no warrant for anger against aggression, or other ill doing: saying of me that, in such case, “he is borrowing *our* thunder.” This implies the assertion that only those who accept the current creed have any right to feel indignant when they see other men wronged. But I cannot allow you thus to monopolize righteous indignation. If you ask what prompts me to denounce our unjust treatment of inferior races, I reply that I am prompted by a feeling which is aroused in me quite apart from any sense of duty, quite apart from any thought of Divine command, quite apart from any thought of reward or punishment here or hereafter. In part the feeling results from consciousness of the suffering inflicted, which is a painful consciousness, and in part from irritation at the breach of a law of conduct on behalf of which my sentiments are enlisted, and obedience to which I regard as needful for the welfare of humanity in general. If you say that my theory gives me no reason for feeling this pain, the answer is that I cannot help feeling it; and if you say that my theory gives me no reason for my interest in asserting this principle, the

answer is that I cannot help being interested. And when analysis shows me that the feeling and the principle are such as, if cherished and acted upon, must conduce to the progress of humanity towards a higher form, capable of greater happiness, I find that though my action is not immediately prompted by the sense of obligation, yet it conforms to my idea of obligation.

That motives hence resulting may be adequately operative, you will find proof on recalling certain transactions, dating back some eight years, in which we were both concerned. You can scarcely fail to remember that those who were moved by feelings and ideas such as I have described, and not by any motives which the current creed furnishes, displayed more anxiety that our dealings with alien peoples should be guided by what are called Christian principles than is displayed by Christians in general.\*—I am, sincerely yours,

HERBERT SPENCER.

P.S.—Should you wish to publish this letter as my response to your appeal, I am quite willing that you should do so. Other claims on my time will, however, prevent me from carrying the discussion further.

Along with this letter, when published in *The Guardian*, there appeared a rejoinder from Mr. Davies, which, omitting, as before, a part concerning a different question, ran thus :—

Kirkby Lonsdale, July 28, 1890.

Dear Mr. Spencer—I am much obliged to you for responding so kindly to the challenge which I ventured to address to you. You will not think it ungracious, I hope, if, notwithstanding the purpose which you intimate in your postscript, I make public some of the reflections which your letter suggests to me.

\* \* \* \* \*

Most amply do I acknowledge the generous zeal for human welfare, the indignation against oppression, shown by yourself and others who recognise no supernatural sanction of morality. The Christianity of to-day owes much to—has, I hope, really gained much from—your own humane ardour and the bold protestations of the followers of Comte. A Christian's allegiance is not to the Christian world, not even to Christianity, but to the law of Christ and the will of the Heavenly Father; and he may as easily admit that Christians have been surpassed in Christian feeling and action by agnostics as that the priest and the Levite were put to shame by the Samaritan.

I have also no difficulty in acknowledging that the performance of good offices may arise out of sympathy and pleasure in doing them. I do not understand why "the assumption that the idea of 'duty' has a supernatural origin" should be supposed to imply "that men's actions are determined only by recognition of ultimate consequences, and that if recognition of ultimate consequences does not lead them to do right, they can have no motive to do right." I never thought of questioning that men act, in a great part of their conduct, from the motives you describe. What I wish to know is why, when the thought of duty comes in, a man should think himself bound to do, whether he likes it or not, what will tend to the preservation of the species. It is quite intelligible to me that you "cannot help" trying to protect other men from wrong: what I still fail to see clearly is, how your philosophy justifies you in reproaching those who *can* help being good. It is

\* In my letter as originally written, there followed two sentences which I omitted for fear of provoking a controversy. They ran thus:—"Even one of the religious papers recognized the startling contrast between the energy of those who do not profess Christianity and the indifference of those who do. I may add that on going back some years further you will find that a kindred contrast was implied by the constitution of the Jamaica Committee."

nature, you say, that makes the thoughtful parent good, that makes the generous man sacrifice himself for the benefit of his fellowmen. But nature also makes many parents selfishly regardless of the interests of their children; nature makes some men hardened freebooters. If they also cannot help being what they are, is there any sense, from your point of view, in saying that they act as they ought not to act? Would they feel that you were appealing to their sense of duty if you explained to them as a fact of nature that, should other men do as they are doing, the race would tend to disappear? To Mr. Huxley, as a philosopher, a taste for good behaviour belongs to the same category as an ear for music—some persons have it and others are without it; the question which I cannot help asking is whether that is the ultimate word of your ethics. I cannot see how a man who is made aware that he acts only from natural impulse can reasonably consider whether he ought or ought not to do a certain thing, nor how a man who knows that he acts only for the gratification of his own desires can reasonably throw himself away for the sake of any advantage to be won for others.

As I do not quite know what "the current creed" may be on the questions at issue, I beg leave to sum up my own belief as follows:—The Unseen Power is gradually creating mankind by processes of development, and the human consciousness is so made as to be responsive to the authority of this Power; justice is the progressive order which the Maker is establishing amongst human beings, and it is binding upon each man as he becomes aware of it, and is felt to be binding, because he is the Maker's creature.—Believe me, very truly yours,

J. LLEWELYN DAVIES.

Before proceeding to discuss further the special question at issue, I may remark, respecting the more general question involved in Mr. Davies' closing paragraph, that there is a curiously close kinship between his view and that which I have myself more than once expressed. In § 34 of *First Principles* I have said, in reference to the hesitating inquirer:—

"It is not for nothing that he has in him these sympathies with some principles and repugnance to others. He, with all his capacities, and aspirations, and beliefs, is not an accident, but a product of the time. He must remember that while he is a descendant of the past, he is a parent of the future; and that his thoughts are as children born to him, which he may not carelessly let die. He, like every other man, may properly consider himself as one of the myriad agencies through whom works the Unknown Cause; and when the Unknown Cause produces in him a certain belief, he is thereby authorized to profess and act out that belief."

And then in the *Data of Ethics*, § 62, speaking of the different types of ethical doctrine as severally presenting one or other aspect of the truth, I have said:—

"The theological theory contains a part. If for the divine will, supposed to be supernaturally revealed, we substitute the naturally-revealed end towards which the Power manifested throughout Evolution works; then, since Evolution has been, and is still, working towards the highest life, it follows that conforming to those principles by which the highest life is achieved, is furthering that end."

Returning now to the special question, I have first to remark that Mr. Davies, and those who take kindred views, tacitly assume that the conception of "ought" is a universal and a fixed conception; whereas it is a variable conception, and is in

large measure relevant to the social needs of the time being. In an article on "The Ethics of Kant," published in *The Fortnightly Review* for July, 1888, and now contained in the third volume of my *Essays*, I have given seven authorities in support of the conclusion that "the lower races of men may be said to be deficient in the idea of right:" they have no such feeling of "ought" as is general with us, and where it exists it is often quite otherwise directed. Among various savage peoples the *duty* of blood-revenge is of all duties the most sacred. A Fijian slave-tribe "said it was their *duty* to become food and sacrifices for the chiefs;" and Jackson tells of a Fijian chief who was thrown into religious frenzy from a belief that the god was angry with him for not killing more of the enemy. Nor is it among the inferior races that we meet with conceptions of "*ought*" utterly different from those which Mr. Davies assumes are recognized by men as of supreme authority. Among the Riff pirates of the Morocco coast, the greatest insult a man can receive is to be told that his father died in his bed—that he did not die fighting while engaged in robbery: the implication being that he *ought* to have so died. Similarly is it with European peoples in respect of duels. The aggrieved man is forced by a strong sense of *obligation* to challenge one who has injured him; and the injurer entertains no doubt that he *ought* to accept the challenge—feels, in common with all his associates, that it is his *duty* to do this thing which is condemned by the creed he professes. And in the German Emperor's recent applause of duelling-clubs as giving to the youth "the true direction of his life," we see a deliberate advocacy of usages utterly at variance with the nominally-accepted principles of right conduct.

These cases show, I think, that the conception of "ought" is relevant, partly to sentiments predominant in the individual, partly to the feelings and ideas instilled during education, and partly to the public opinion which prevails: all of them variable factors. The truth is that every desire, seeking as it does gratification, carries along with it the idea that its gratification is proper or right; and when it is a powerful desire it generates, when it is denied, the idea that the denial is wrong. So true is this that a feeling which prompted a wrong action, but was effectually resisted, will, in some cases, afterwards generate regret that the act prompted was not committed; while, conversely, a good action at variance with the habitual bad actions may be followed by repentance: instance the miser who feels sorry that he was betrayed into a piece of generosity. Similarly the consciousness of "ought," as existing among men of superior types, is simply the voice of certain governing sentiments developed by the higher forms of social life, which are in each individual endorsed by transmitted beliefs and current

opinion—a sanction much stronger than that which any of the inferior feelings have.

A full answer to the question put by Mr. Davies, presented in a different and much more elaborate form, has been already given in *The Data of Ethics*. In the chapter entitled “The Psychological View,” and more especially in §§ 42—46, the genesis of the feeling of obligation is explained at considerable length.

Perhaps he will still ask—Why, having the feeling of obligation, should a man yield to it? If so, the answer is of the same general nature as that which may be given to the question—Why, having an appetite for food, should a man eat? Though, in the normal order, a man eats to satisfy hunger, and without definite consciousness of remoter ends, yet, if you demand his justification, he replies that, as conducive to health, strength, and ability to carry on life and do his work, the yielding to his appetite is needful. And similarly one who performs an act which his sense of duty prompts, if asked for his reason, may fitly reply that though he yielded to the feeling without thought of distant consequences, yet he sees that the distant consequences of such conformity are, on the average of cases, beneficial not only to others but in the long run to himself. And here let me repeat a truth which I have elsewhere insisted upon, that just as food is rightly taken only when taken to appease hunger, while the having to take it when there is no inclination implies deranged physical state; so, a good act or act of duty is rightly done only if done in satisfaction of immediate feeling, and if done with a view to ultimate results, in this world or another world, implies an imperfect moral state.

## APPENDIX D.

### CONSCIENCE IN ANIMALS.

SHORTLY after the publication in *The Guardian* of the correspondence reproduced in the preceding Appendix, I received from a gentleman residing in Devonshire the letter which I here quote :—

Dear Sir—The following careful observations on animals other than man may be of interest to you as supporting your idea that the idea of ‘duty’ or ‘ought’ (owe it) may be of non-‘supernatural’ origin. [‘Supernatural’ is used in usual sense without committing the writer to any opinion.]

My dog has an aversion to injure living flesh or anything that is ‘shaped.’ He will not bite any animal except under the *greatest* provocation. If I press a sharp-pointed pen-knife against the skin of the back, he seizes my wrist between his hind teeth. The mechanical advantage is such, that if he closed his jaw he could crush flesh and bone. But no matter how I increase or prolong the pressure he *will* not close his jaw sufficiently to mark the flesh. I have repeated this and similar *experiments* many times. I can’t find how the ‘ought’ was established. It is not hereditary. The father was a good-tempered ‘fighting’ dog—the mother *most vicious*; but I never allowed her to come into contact with the pup but in the dusk, in order to avoid imitation or unconscious education.

Until ‘Punch’ was three yrs. old I never knew him give an angry growl. I sat down on his tail, doubling it under me accidentally one day, when I heard a growl of a totally different *timbre* to what I had ever before. The odd thing was—when I rose the dog begged pardon for the unusual tone and temper in a way that could not be mistaken. Evidently he recognized his own violation of an ‘ought’ existing in his mind (conscience).

Further, if I tease him with a rough stick he seizes it and *crushes* it, but if with my crutch (I am lame) or my mahl stick, he seizes it; but will not leave the mark of his teeth in anything that has had ‘work’ done on it to any extent.

*The ‘ought’ may be established as an obligation to a higher mind, in opposition to the promptings of the strongest feelings of the animal, e.g.*

A bitch I had many years ago showed great pleasure at the attentions of male dogs, when in season. I checked her repeatedly, by *voice only*. This set up the ‘ought’ so thoroughly, that tho’ never tied up at such times, she died a virgin at 13½ yrs. old.\* By the time she was 4 she resented

\* At least I have no cause to think otherwise.—T. M. J.

strongly any attention from the male, and by seven she was a spiteful old maid, resenting even the presence of the males.

*Dogs can form a standard of 'ought' as to skill or powers of doing.* This bitch was a powerful swimmer. A young smooth Scotch terrier was introduced into the house. They became playfellows, chasing and running all over the grounds. One day they were crossing the Prince's Street Ferry, Bristol. The bitch sprang from the ferry boat as usual into the water and the young dog followed; but began to drown. She saw his efforts, seized him by the back of neck and swam ashore with him. A few seconds after, she seized him and shook him violently for some time. Ever after, she bit or shook him if he attempted to play. [Contempt on discovery of want of power she apparently regarded before as normal?]

*Further, 'indignation' is not confined to human beings.* I used to pretend to beat a younger sister and she feigned crying. The bitch flew at me. Reversing the conditions, the bitch growled and finally flew at my sister. We tried the experiment many times with other actors and same results. Her sympathies were always on the side of the persons attacked, unless she had a previous dislike to them.

Further observation showing her the attacks were feigned, she often joined in them with uproarious hilarity, but this state of mind did not arise till after repeated observation.

Pardon these records of observation if they appear trivial. Unfortunately I have only been able to make myself acquainted very partially with your works, and such facts may have come under your observation to a greater extent than under mine.

I am yours obdtly.,

T. MANN JONES.

Northam, Devon,  
14/8/90.

My response, thanking Mr. Jones and recognizing the value of the facts set forth in his letter, drew from him a second letter, in which he says:—

"Pray make what use you like of the letter, but it is only right to say that some of the facts are in the possession of Prof. Romanes. You can depend upon the accuracy of the observations—I learned to observe from the Belfast naturalists, Pattison, the Thompsons and others—and I trained my wife, before marriage, to help me, and not run away with mere impressions.

"The idea of 'ought' is abnormally strong in Punch, the dog I spoke of—his tastes too are unusual. He cares more for sweets than meat. When he was about 6 months old I found out some way he had gained the meaning of Yes and No. I have hundreds of times offered him a knob of sugar—when he was on the point of taking it said No! He draws back. If he has taken it in his mouth a *whispered* No! causes him to drop it. If he is lying down and I place sugar all round whispering No! the lumps remain untouched till a 'Yes' is said. But—but—but—the dog differs from the human being! He will rarely accept a *first* Yes, tho' he does a first No! Experience has taught him the Yes *may* be followed by a No! and he waits expectantly. *There is no eagerness to set aside the 'ought' when an excuse offers.* (Special probably, not general in dogs.) *The minds of dogs discriminate between great and small departures from their standard of 'ought.'* If I dropped a fair-sized piece of sugar, neither Fan (the bitch) nor Punch, considered they had the slightest right to touch it. If the piece were very small both hesitated—and if No! were not said, finally ate it. I have tried graduating the lumps to find out where the 'ought' came in. The male has a finer

conscience than the female. I need hardly say I carefully avoided loud tones and gesticulation.

"No! Oh! So! Go! are equivalents to a dog's ear, but the sibilant must be very soft. So also 'Yes,' 'bess,' 'press,' but they recognize various forms of expression as equivalent. 'Yes,' or 'You may have it,' are same value to Punch. My pony is nervously anxious to obey the 'ought.' 'Woh! Halt! Stop! &c., are of equal value. The dog appears to me to study the *tone* less than the pony and to pay more attention to sound and its *quantity*. Many of the acts of both strike me as possibly acts of 'worship' in its simplest form, e.g., the fact I think I mentioned in my letter, of the dog's anxiety to 'propitiate' on the occasion of his first angry growl, when three years old; though I had not recognized the 'ought' in the dog's mind nor had I ever punished him."

Along with this letter Mr. Mann Jones inclosed a series of memoranda which, while they are highly interesting and instructive, also serve to show how carefully and critically his inquiries have been conducted, and how trustworthy, therefore, are his conclusions. With the omission of some paragraphs, they are as follows:—

*Recognition of duty or ought in a bitch—deliberate violation of the principle recognized—simulation of indignation at the ought being set at nought by a cat.*

Prior to '85 I had satisfied myself that domestic animals recognized duty. I was anxious, however, to procure as thoroughly degraded an animal as I could to test—1st, whether the 'ought' might not proceed from two very different classes of motives, which I had been accustomed to distinguish as (A) the *Rectal-moral* and (B) the selfish or *conventional-moral*. 2ndly, I wanted to test whether the idea set forth by some theologians that the 'most noxious animal was *innocent*,' and that moral responsibility only attached to man, was true.

I observed a very handsome bitch at Mardock station repeatedly drive a large number of fowls belonging to the station-master off the line and platform so soon as she heard the distance signal.

I asked her history and found she had been accidentally left by a lady travelling in a first-class carriage some months before. I inferred she was likely to have been 'spoiled' and as she was evidently aged, she would not easily lose any bad habits. Further, I ascertained she was gluttonous, passionate, yet sulky, lascivious, a coward, not fond of children, without any strong attachments, and dirty in her habits. She seemed so much like the worst specimen of 'fallen humanity' the *putaine*, that I asked but one more question "She is very intelligent, you have taught her to clear the station at proper time?" "She *is* very sharp, but I did not teach her; she watched the boy a few times doing the work and then took it as her duty. Now, though she is very greedy, if we are late in the morning, she comes without her breakfast and has nothing till late in the day rather than not clear the line." This trait decided me. I thought if I removed her from the station-master's house, she would drop the last 'duty' that was at all unselfish, and be thoroughly 'bad-all-round.'

I took her home. She went willingly, shewing no fright and making herself at home on reaching my house. I kept her in a house and an outhouse 24 hours, feeding her well, then took her to the station when she showed little pleasure at seeing her master and little inclination for the old duty. By end of a fortnight she took no notice of either.

The third morning the stable-boy, Ben, came to me. "Sir, Judy is mad.



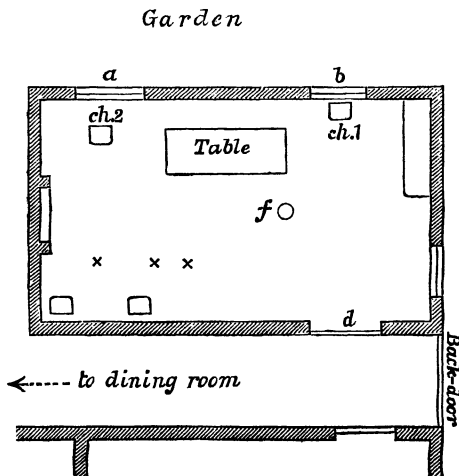
I was sweeping near her over 2 hours ago and stooped to pat her. She first bit my hand and then my leg" (both wounds bled) "and she has sat in the corner, with her back crushed into it, ever since." I went to the stable, spoke kindly to her and then stooped to pat her. She snapt viciously. Letting the muscles of the hand balance so that the finger bones and metacarpals played loose on each other and the wrist, I struck her heavily over the eyes. She snapt again and I struck as she snapt. The contest continued 5 minutes, when I left her, nearly blind eyed and tired. I asked Ben two hours after how she was. "Oh! I think she *is* mad. She is as sulky as ever and sits as she was in the corner." When I went in, she came forward and fawned upon me. *From that day I never struck her.* She was most obedient, good tempered, gentle and anxious to please me. To a certain extent she showed the same character to my wife and to a servant, the cook, who was very decided, but to the boy and a younger servant she showed the old character and also to others. In fact henceforth she lived a double life, altering her apparent character the moment she heard my footstep. I saw here that her sense of duty and her obedience had no ethical value: they were simply effects of fear, or, in some degree, hope of gain. They formed no part of her real character.

I took care she was frequently and well fed, purposely with a large *variety* of food. I therefore left no motive for theft. About a fortnight after I bought her, the cook came to my wife—"Ma'm, I am constantly missing things off the kitchen table. Either one of the cats has turned thief or Judy takes the things, yet I can't tell how she gets at them. I don't leave a chair near enough the table for her to use—besides she is so stiff and long-backed that if she tries to get on the chair she slips over the other side."

I give a diagram of kitchen and surroundings to make clear what follows.

I caused a number of articles of food brought out of dining room, to be placed on the table: the chair being put too far off for use. Sending some of the family in the dining room with injunctions to keep still till I called I left the two cats and Judy at their plate, *f*. I then went into the garden but returned quietly to window *b*, which had a coloured muslin half-blind that hid me from observation. As soon as all was quiet Judy left her dinner, went to door *d*, apparently listened intently and looked repeatedly up and down passage. She then went

to *x* and reared herself on her hind legs, walking along so as to see the whole surface of table and going backward so as to get better view. She then went to one of the cats and hustled her to the chair. The cat at length understood Judy, jumped on chair, thence on to table and dragged a meat bone down to *f*. Judy shook her—took the bone and began to pick it. I gave the signal and a light-footed girl ran into the kitchen. As soon as Judy



heard the footsteps, which was not till the girl got to the door, *she flew at the cat with a growl and worried her and finally chased her through a hedge 200 feet off.*

I saw the whole of this drama enacted on two occasions—parts on several; others saw parts many times. The same caution to ascertain the ‘coast was clear,’ the same employment of one or other of the cats and the same feigned indignation and attempt by gesture to fix the theft on the cat, occurred every time.

I don’t think I am wrong in concluding that Judy recognized that the cat had no right to get on the table after the food; that she was instigating breach of duty, and that she simulated anger in order to shift responsibility which her mind acknowledged.

Space and time prevent my giving many more illustrations of her character. She was an extreme type, but I have had other animals like her, who recognized duty and “moral obligation” to a greater or less extent as something expected of them by a superior, but which they performed entirely from hopes of reward or fear of punishment generally, occasionally from liking (which was *not sympathy*) but that form arising from the object giving pleasure or profit to the subject so ‘liking.’ The idea of duty, justice, ‘ought,’ in all such cases arose from selfishness. I class them as ‘selfish-moral,’ conventional-moral, fashion-moral acts of duty, or shortly as ‘Judyism.’

I now proceed briefly to consider the ‘sense of duty’ or ‘ought’ in another of my teachers—the dog Punch. I have given details before but briefly. He wills not to injure any living thing, nor anything that shows by its shape that work has been expended upon it. The most striking instance is that I have repeatedly purposely caused him severe and long continued pain by pressing upon and even cutting the sub-cutaneous loops of the nerves without ever being able to induce him to bite me or even snap at me. In the same way, when bitten by dogs, often severely, he will not bite them. There appears to me to be here a ‘sense of duty,’ or of ‘ought,’ which is specifically different from all those varieties I have styled Judyism.

I ask why does he not bite?

It may be said he is afraid of you. I think that if anyone saw the relations between us they would soon dismiss this as the motive. I appreciate him too much as a valuable ‘subject’ to make the blunder of inspiring fear. I would as soon think of doing so as the electrician would think of using his most sensitive electroscope roughly. The dog and his pupil are so *en rapport* that if the former wants a door opened, or a thorn or insect removed, he comes to me, say I am at my desk, stands up, puts his right paw on my arm and taps my shoulder with the left repeatedly till I attend to him, when he clearly indicates what he wants, and if the want is to have thorn or insect removed he clearly indicates the surface, often to a square inch or nearer.

It may be urged that he will not hurt me because he has such trust or faith in me—he thinks I would not willingly hurt him. There appears something in this at first sight, and it gains colour from the fact that when he was less than 12 months old, a gamekeeper shot at him when near, and deposited about 30 pellets of shot in his head and body, which I extracted. The memory of these operations might lead him to class my pressure of the knife point as something curative.

But then, where does such an explanation come in, in his behaviour to my *mahl* stick, which he will not break under the same circumstances that cause him to crush an unshaped stick to splinters? It may be said that when bitten by another dog, he does not retaliate because he is a coward. The explanation won’t do. He barks remonstratively, as he does when I hurt him when we are romping, but he *won’t run away*. I can’t get him away often, and he is frequently bitten more severely in consequence. An incident that

occurred a few days back threw some more light on the idea of 'right' in Punch's (or Monkey's) mind—he answers indifferently to both names. I was coming through the very narrow street of West Appledore when a much larger dog seized him, and bit Punch so severely about the face as to make him bleed. Punch then resisted for the first time, to my knowledge, not by biting, but by a Quaker-like defence that was most scientific. He seized the other dog firmly by the hind leg above the heel, and raised the leg so high off the ground as to throw the dog's body into unstable equilibrium. The dog stood still for some time, evidently afraid to move for fear of falling on his back and being at the mercy of his opponent. He was in no pain, for Punch was not biting but simply holding firmly. At length the attacking dog tried to get his head round to bite Punch again, but the latter frustrated this by lifting the leg higher and carrying it gradually round in the opposite direction to the dog's head, so as to preserve the original distance. At the end of about 2 minutes I was compelled to interfere, as a horse and cart were coming close. The dog slunk off whilst Punch jumped vertically, bounding many times off the ground in a manner that I can only compare with the bounding of a football, barking merrily at the same time.

Hundreds of similar instances to the few I have given, convince me that this dog has in his mind a sense of duty totally *different in kind* from that which I have illustrated and characterized as *Judyism*. It is in fact "Do-as-you-would-be-done-by-ism." I have observed this species of sense of duty, of the 'ought' (or morality) in a number of animals, and I have become accustomed to call this *kind* 'Rectal sense of duty' and hence to divide 'morality' into *selfish*, emotional, clique, 'fashion' morality, or *Judyism*, and Rectal morality.

I never met with two such extreme types of the dominance of the two kinds of motive before. Most animals are actuated by the two species of sense of duty in varying ratio, many only by selfish or Fashion-morality; but some individuals appear affected little by either. These form the utterly 'immoral.' So far as my inductions from observations of animals go, the division into Rectal and conventional 'sense of duty' is exhaustive and inclusive. All acts that recognize an 'ought' appear to me to come under one or the other.

There is a remarkable difference in the animal according to which sense of duty is predominant—which species of morality rules its life. If *Rectal*, the animal is trustworthy and reliable. If *conventional*, untrustworthy, changeable and shift. So much for results in outward conduct. I apprehend that the results on the mind or ethical sense, of conventional morality is on the whole disintegrating. In fact I have observed this in animals, though I have not been able to pursue my observations so far as I could wish.\*

On the other hand, the Rectal sense of duty in animals is, in the phraseology of the philosopher, a developing force. The Rectal morality of the animal increases with time. In the phraseology of some theologians it may perhaps be termed a regenerating or 'saving' force. (Those who believe that a profession of a creed is the only saving force, would scarcely admit it had more value than the conventional 'ought,' or perhaps not as much in some cases.)

As to the origin of the Rectal sense of duty or rectal morality, so far as my observations go, the chief thing I can predicate is that it is unselfish. It seems to be closely connected with 'sympathy,' as distinguished from 'feeling' of the kind before defined. The individuals among the higher animals who act from the rectal sense of duty appear to be remarkable, so far as my observations go, for ability to "put-yourself-in-his-place-ness"

\* Query? I take it the 'rectal' sense of duty is at the base of all reality of character, the conventional has more the character of an acquired mental habit.

which is at the root of true 'sympathy.' The tendency is always "to do as they would be done by." In most cases that I have observed it appeared to be inborn, but developed as the animal got older.

The division I have been led to, by hundreds of observations on individuals of different species, of the 'Idea of duty,' and consequently all morality, into Rectal and conventional (*mores*) I have never seen formulated. *Probably other observers have made the distinction.* It is tacitly recognized, however, in most of the oldest writings I know anything of. The recognition of the value of the Rectal appears to me to run through many of the books collected as the Bible, and the O. T. and N. T. Apocrypha, like a vein of gold in quartz, and to be the very *protagon* or 'nerve-centre stuff' of most of Christ's teaching. I have seen the distinction tacitly admitted in many theological works, tho' I think I am right in asserting (I say it as the oratorians speak, —under correction) there is a want of recognition of the fact that the chief (if not only) value of the conventional 'sense of duty,' or selfish 'cught,' is to prevent friction.

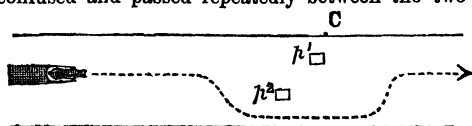
*Not only do animals (other than man) act upon the "ought" in their minds, but some of the more intelligent act as if they expected or believed that it existed in the minds of some men.*

In August '86 I was driving Prince (my pony) and at the same time discussing an interesting point in science with my wife. I generally guided him entirely by the voice, but in the heat of the argument unthinkingly emphasized my points with the whip (which had had a new knotted lash on that day) on the pony's flanks. He stopped about the third blow and looked round. This attracted my wife's attention—'Prince is remonstrating': 'You struck heavily.' Later on I must have struck him repeatedly. When he was loosed from the harness, I was standing out of his direct line to the stable-door. Instead of going to the stable, as was usual, he walked up to me, and after repeated attempts to draw my attention, touched me with his nose and then approached his nose as closely as he could to the wales. This he repeated until I had the places bathed.

About two months later, on a similar occasion, he repeated the same actions.

In autumn '86 I was in Ware with my pony. Coming out of a shop, I was on the point of stepping into the carriage when I noticed the pony (Prince) watching me. (He was accustomed to my boy jumping up when the vehicle was in motion.) I told my wife to start him. She tried repeatedly, but he would not move till he saw I was seated, when he started at once. (The experiment was repeated many times subsequently.) The strange thing is the complicated train of thought that evolved an 'ought' differing in the case of a lame man from the duty in other cases.

The same autumn, we were driving from Wearside to Hadham. On the road we met with a group of children with two perambulators. They were in awkward positions: several children being close to the left hand hedge, a perambulator and children further to right, the second further still, as in diagram: the distance between c. p<sup>1</sup>, p<sup>2</sup> and right hedge being about equal. There was room to pass between p<sup>1</sup> and p<sup>2</sup> easily, but the children were confused and passed repeatedly between the two points. My wife said—



children at a, when he fell into a walk, turned to the right, and passed them

"See if Prince will avoid the children." I dropped the reins on his neck. He went on at a smart trot till 7 or 8 yards from the

with the right wheel near the hedge, turning his head more and more to see whether he was clearing the right or outer perambulator. He left it about 3 yds. in the rear, and then returned sharply to the left side of road and resumed his trot without any intimation he was to do so.

In Nov. '87, after the death of my wife, a relative came to live with me and she drove the same pony. She is so deaf, she cannot hear a vehicle overtaking her. Consequently I always went with her, and if she had the reins, signed with my left hand if a vehicle were coming up behind, for her to draw over to left.

As she was driving one day up a steep hill (therefore with slack reins) on road to Ware, I heard a brewer's cart coming behind. The man had been drinking and followed close in our wake, though there was plenty of room to pass if he had kept well to the right. I gave my relative no signal, as I wanted to observe the pony's actions. He appeared nervous and restless, turning his head as far as he could to the right to see what was wrong. The man drove the heavy cart very close behind but the pony could not see the horse or vehicle. After 3 or 4 minutes anxiety (I use the word advisedly : the working of the ears and the 'twitching' of his muscles justifies me), receiving no sign, he deliberately drew as closely as possible into the *left-hand* hedge and waited. As soon as the waggon passed, he went off at a brisk trot.

After many experiments on different days I found that if I were driving and a vehicle overtook us, Prince waited for me to tighten the left rein, but if my relative were driving, he decided by the sound when to draw to the left. Even if she tightened the right rein—he disobeyed the sign. After many experiments I had full confidence he would always act, if she were driving, on the evidence of his own hearing; and she often subsequently drove without me, the pony evidently recognizing his new duties.

*Examples of animals (other than men) initiating co-operation in duty. [Simultaneous occurrence of the idea of duty, suggested by same circumstances.]*

In the autumn of 1886, I started after 10 o'clock p.m. from my cottage at Baker's End to drive some friends homeward. On descending from the high ground, I passed into a dense fog, which the carriage lights failed to penetrate 6 feet—the fog reflected the light like a wall. Some distance past the Mardock Station road, my road turned almost at right angles. Here we so thoroughly failed to find the turning that the horse was driven against the bank, up which he reared crashing into the hedge at the top. We all alighted and my friends went on. I turned pony and carriage and got in, to drive back : the pony moved slowly, but almost dragging the reins out of my hands. I got out thinking the reins were caught on the shaft as the pony had always shown a liking for a very tight rein down hill and our road here was a descent. I could find nothing wrong with the reins. Taking out a lamp I went to the pony's head, which he was still holding as low as he could. Then I saw his nose was nearly on the back of my black dog Jack (the father of Punch) who was standing in front with his nose near the ground, but pointing homeward. I got in; said 'Go on;' did not use the reins, but as we went at a walking-pace, tried frequently to measure with the whip handle the distances they kept from each hedge. They took me safely into the yard behind my house, and my measurements showed they kept the middle of the road the whole way; except at one place, where there is a deep gully on the right, separated from the road by a very slight fence. Here they kept within 18 inches of the left (or further side from the gully). Altho' the night was cold and the pace that of the Dead March, the horse was wet with perspiration and the dog panting with tongue out when we got into the yard, probably from the anxiety to do the duty they had undertaken. There are 6 turns in the road and three of them are right angles, narrow in all

cases, but not more than the full length of horse and carriage, in two cases I think, and my memory is pretty clear.

There was a little episode when we got into the yard, illustrating the close analogy between the feelings of these animals and human feelings under similar circumstances. The horse rubbed his head repeatedly against Jack, whilst Jack 'nosed' or rubbed his face against the pony's. No expression of mutual gratulation on the completion of a self-imposed duty could have been more significant.

There is an interesting parallelism between the conclusions drawn by Mr. Jones from his observations on the motives of animals and the conclusions concerning human motives contained in Chap. IV, "The Sentiment of Justice." The distinction between "rectal-moral" and "conventional-moral" made by him, obviously corresponds with the distinction made in that chapter between the altruistic sentiment and the pro-altruistic sentiment. This correspondence is the more noteworthy because it tends to justify the belief in a natural genesis of a developed moral sentiment in the one case as in the other. If in inferior animals the consciousness of duty may be produced by the discipline of life, then, *a fortiori*, it may be so produced in mankind.

Probably many readers will remark that the anecdotes Mr. Jones gives, recall the common saying—"Man is the god of the dog;" and prove that the sentiment of duty developed in the dog arises out of his personal relation to his master, just as the sentiment of duty in man arises out of his relation to his maker. There is good ground for this interpretation in respect of those actions of dogs which Mr. Jones distinguishes as "conventional-moral;" but it does not hold of those which he distinguishes as "rectal-moral." Especially in the case of the dog which would not bite when bitten, but contented himself with preventing his antagonist from biting again (showing a literally-Christian feeling not shown by one Christian in a thousand) the act was not prompted by dutifulness to a superior. And this extreme case verifies the inference otherwise drawn, that the sentiment of duty was independent of the sentiment of subordination.

But even were it true that such sentiment of duty as may exist in the relatively-undeveloped minds of the higher animals, is exclusively generated by personal relation to a superior, it would not follow that in the much-more-developed minds of men, there cannot be generated a sentiment of duty which is independent of personal relation to a superior. For experience shows that, in the wider intelligence of the human being, apart from the pleasing of God as a motive, there may arise the benefiting of fellow-men as a motive; and that the sentiment of duty may come to be associated with the last as

with the first. Beyond question there are many who are constrained by their natures to devote their energies to philanthropic ends, and do this without any regard for personal benefit. Indeed there are here and there men who would consider themselves insulted if told that what they did was done with the view of obtaining divine favour.

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To find the authority for any statement in the text, the reader is to proceed as follows:—Observing the number of the section in which the statement occurs, he will first look out, in the following pages, the corresponding number, which is printed in conspicuous type. Among the references succeeding this number, he will then look for the name of the tribe, people, or nation concerning which the statement is made (the names in the references standing in the same order as that which they have in the text); and that it may more readily catch the eye, each such name is printed in *Italics*. In the parenthesis following the name, will be found the volume and page of the work referred to, preceded by the first three or four letters of the author's name; and where more than one of his works has been used, the first three or four letters of the title of the one containing the particular statement. The meanings of these abbreviations, employed to save the space that would be occupied by frequent repetitions of full titles, is shown at the end of the references; where will be found arranged in alphabetical order, these initial syllables of authors' names, &c., and opposite to them the full titles of the works referred to.

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## EXTRACT FROM THE PROVISIONAL PREFACE.

Something to introduce the work of which an instalment is annexed, seems needful, in anticipation of the time when completion of a volume will give occasion for a Permanent Preface.

In preparation for *The Principles of Sociology*, requiring as bases of induction large accumulations of data, fitly arranged for comparison, I, some twelve years ago, commenced, by proxy, the collection and organization of facts presented by societies of different types, past and present; being fortunate enough to secure the services of gentlemen competent to carry on the process in the way I wished. Though this classified compilation of materials was entered upon solely to facilitate my own work; yet, after having brought the mode of classification to a satisfactory form, and after having had some of the Tables filled up, I decided to have the undertaking executed with a view to publication; the facts collected and arranged for easy reference and convenient study of their relations, being so presented, apart from hypothesis, as to aid all students of Social Science in testing such conclusions as they have drawn and in drawing others.

The Work consists of three large Divisions. Each comprises a set of Tables exhibiting the facts as abstracted and classified, and a mass of quotations and abridged abstracts otherwise classified, on which the statements contained in the Tables are based. The condensed statements, arranged after a uniform manner, give, in each Table or succession of Tables, the phenomena of all orders which each society presents—constitute an account of its morphology, its physiology, and (if a society having a known history) its development. On the other hand, the collected Extracts, serving as authorities for the statements in the Tables, are (or, rather will be, when the Work is complete) classified primarily according to the kinds of phenomena to which they refer, and secondarily according to the societies exhibiting these phenomena; so that each kind of phenomenon as it is displayed in all societies, may be separately studied with convenience.

In further explanation I may say that the classified compilations and digests of materials to be thus brought together under the title of *Descriptive Sociology*, are intended to supply the student of Social Science with data, standing towards his conclusions in a relation like that in which accounts of the structures and functions of different types of animals stand to the conclusions of the biologist. Until there had been such systematic descriptions of different kinds of organisms, as made it possible to compare the connexions, and forms, and actions, and modes of origin, of their parts, the Science of Life could make no progress. And in like manner, before there can be reached in Sociology, generalizations having a certainty

making them worthy to be called scientific, there must be definite accounts of the institutions and actions of societies of various types, and in various stages of evolution, so arranged as to furnish the means of readily ascertaining what social phenomena are habitually associated.

Respecting the tabulation, devised for the purpose of exhibiting social phenomena in a convenient way, I may explain that the primary aim has been so to present them that their relations of simultaneity and succession may be seen at one view. As used for delineating uncivilized societies, concerning which we have no records, the tabular form serves only to display the various social traits as they are found to co-exist. But as used for delineating societies having known histories, the tabular form is so employed as to exhibit not only the connexions of phenomena existing at the same time, but also the connexions of phenomena that succeed one another. By reading horizontally across a Table at any period, there may be gained a knowledge of the traits of all orders displayed by the society at that period; while by reading down each column, there may be gained a knowledge of the modifications which each trait, structural or functional, underwent during successive periods.

Of course, the tabular form fulfils these purposes but approximately. To preserve complete simultaneity in the statements of facts, as read from side to side of the Tables, has proved impracticable; here much had to be inserted, and there little; so that complete correspondence in time could not be maintained. Moreover, it has not been possible to carry out the mode of classification in a theoretically-complete manner, by increasing the number of columns as the classes of facts multiply in the course of Civilization. To represent truly the progress of things, each column should divide and sub-divide in successive ages, so as to indicate the successive differentiations of the phenomena. But typographical difficulties have negatived this: a great deal has had to be left in a form which must be accepted simply as the least unsatisfactory.

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